

Dehcho First Nations
AIP negotiations

Federal Document
November 29th, 2007

Federal Interests re Taxation and Comprehensive Land Claims and Self-Government Negotiations

November 29th, 2007
Yellowknife, Northwest Territories

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Aboriginal groups are asking the federal and provincial/territorial governments at comprehensive land claims and self-government negotiation tables important questions in respect of taxation matters.

Among others:

1. Will the aboriginal self-government have powers to levy taxes ?
2. If yes, what kind of taxes?
3. If yes, levied over who?
4. If yes, levied where?
5. What will happen with the *Indian Act* s.87 exemption?
6. Will the aboriginal citizens pay taxes?
7. If yes, to which government? Aboriginal government only?
Federal/provincial/territorial and aboriginal self-governments?
8. Will the aboriginal self-government pay income tax on revenues earned through various sources (ie fees, dividends, royalties)?
9. Will the aboriginal self-government pay sales tax on the purchase of goods and services (ie when buying new computers, paying lawyer's fees)?
10. Will the Capital (land, cash and assets) transferred to the aboriginal self-government be taxable?
11. Will the income earn on the Capital transfer payments be taxable?
12. Will the lands of the aboriginal self-government be subject to real property tax?

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TAX POWERS

Issue

- Could an Aboriginal government impose taxes over all persons within its settlement lands?

Federal Approach

- A treaty or a self-government agreement could include provisions recognizing that an Aboriginal government has the power to impose direct taxes over its citizens within its settlement lands.
- In addition, outside of the treaty or the self-government agreement, Canada is prepared to negotiate how an Aboriginal government tax could also apply to other persons within its settlement lands.
- As such, an Aboriginal government tax could apply to all persons within its settlement lands. However, this would have to be done in a negotiated fashion.

Principles

- Taxation is an integral part of any government.
- The accountability between a government and its citizens is a fundamental aspect of any government.
- An Aboriginal government, like any other government, should have an ability to tax.
- Any Aboriginal government tax must apply to its citizens.
- In general, governments that have concurrent jurisdiction within the same land base have an interest in discussing coordination issues to ensure that the overall tax burden of individuals within that land base is not excessive.
- In that context, should an Aboriginal government wish to impose taxes within its settlement lands, Canada and the Aboriginal government would have an interest in discussing and negotiating coordination, administration and tax sharing issues.
- The tax power of the Aboriginal government does not impact on the federal and provincial taxation authority under the Constitution or the territorial authority.

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TAX COORDINATION / TAX ADMINISTRATION

Issue

- Will Canada vacate its tax room in favour of and Aboriginal government and administer any type of tax on behalf of an Aboriginal government?

Federal Approach

- Canada could include treaty or self-government agreement provisions indicating that it is prepared to negotiate tax coordination and tax administration agreements with an Aboriginal government outside of the treaty.
- Under these agreements, the federal government is prepared to vacate and share a negotiated portion of its direct tax room with the Aboriginal government.
- Also under these agreements, the type of taxes that the federal government would administer on behalf of an Aboriginal government would be taxes that are fully harmonised with federal direct taxes. This would minimize both the compliance costs of taxpayers subject to taxation by two or more levels of government and the administrative costs of those governments.
- These agreements are, in a way, contracts between governments and can be terminated by each of the parties. In addition, the agreements would likely require periodic revisions to reflect legislative amendments and changes in administrative practices.

Principles

- Wherever two or more tax systems operate within the same geographical area, or in neighbouring areas, coordination is needed to ensure that the individual tax systems are compatible and do not work at odds with each other.
- Coordination and harmonisation allows for an Aboriginal government to implement a tax while avoiding the costs associated with the design, the implementation and the administration of an independent tax system.
- The federal government has already entered into three different types of Tax Administration Agreements with Aboriginal governments:
 - *Sales Tax:*
A number of Indian Bands currently levy a fully harmonised tax on sales of

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certain commodities (fuel, tobacco and alcohol) on their reserves. The First Nation Sales Tax (FNST) is a copy of the GST and where it applies, Canada agreed to not impose the GST. Canada collects and administers the FNST free of charge on behalf of the Bands. Canada is not entering into new FNST arrangements.

In 2004, Canada entered into taxation agreements to allow the nine self-governing Yukon First Nations (SGYFNs) to impose a First Nation Goods and Services Tax (FNGST) that would be applicable on all of the goods and services that are subject to the GST within their settlement lands. Canada agreed to administer the FNGST and that where it applies, the GST would not, subject to a revenue sharing mechanism. In 2005, an FNGST agreement was entered into with the Tlicho government (NWT) and recently with several other aboriginal self-governments (Kwanlin Dun, Carcross Tagish and Nunatsiavut). In 2006, for the first time with an Indian Band, we entered into an FNGST agreement with Tsawout.

– *Income Tax:*

The same ten SGYFNs have introduced personal income taxes over all residents within their settlement lands. The structure of the First Nation Personal Income Tax (FNPIT) is identical to that of the federal income tax. Residents within settlement lands pay a FNPIT in addition to federal and territorial income taxes. However, the combined tax burden is not higher following the introduction of the FNPIT because Canada and the Yukon Territory have agreed to provide a credit to offset the introduction of the FNPIT. Agreement were also entered into in 2005 with the Tlicho government and the Nunatsiavut. We are as well expecting to conclude agreements with recent aboriginal self-governments.

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TAX TREATMENT OF AN ABORIGINAL SELF-GOVERNMENT

Issue

- What should be the tax treatment of an Aboriginal government post-treaty or post-self-government?

Federal Approach

- Canada is comfortable addressing the issue of the tax treatment of an Aboriginal government in a separate Tax Treatment Agreement (TTA).
- As a general principle, governments do not tax one another when providing governmental services to their citizens. Canada is of the view that activities carried out by Aboriginal governments on their settlement lands to provide services to their citizens should not be subject to taxation.
- As such, to the extent an Aboriginal government carries on governmental activities and purchases goods and services in the course of carrying out a governmental function or generates revenue, a rebate in respect of GST and an income tax exemption, respectively, should be available to the Aboriginal government.

Income

- In a Tax Treatment Agreement, Canada is prepared to provide an Aboriginal government with the same tax exemption provided to "public bodies performing a function of government in Canada" under paragraph 149(1)(c) of the *Income Tax Act*. Under that paragraph, an Aboriginal government would be entitled to a complete income tax exemption, regardless as to location of the activity giving rise to that income.
- In a Tax Treatment Agreement, Canada is prepared to provide corporations owned by an Aboriginal government with the same tax exemption provided to municipally-owned corporations under paragraph 149(1)(d.5) of the *Income Tax Act*. Under that paragraph, Aboriginal government-owned corporations could claim an income tax exemption provided that no more than 10% of the income of the corporation is generated from activities carried on outside settlement lands. Note that a proposed amendment to the *Income Tax Act* provides for this tax treatment to be available, under the same conditions, to corporations owned by a "public body performing a function of government in Canada."

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Sales Tax

In a Tax Treatment Agreement, Canada is prepared to provide for a full rebate of GST paid by an Aboriginal government on purchases made to provide services to its citizens, subject to certain conditions.

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TAX TREATMENT OF INDIVIDUALS

Issue

- What will be the tax treatment of individuals post-treaty or post-self-government?

Federal Approach

- Decisions taken regarding the application of the *Indian Act* and on the status of the First Nation's lands will determine whether the section 87 tax exemption can continue to apply to treaty or self-government agreements participants.
 - Where the *Indian Act* is set aside and no longer defines the relationship between Canada and an Aboriginal government, the section 87 tax exemption ceases to apply;
 - Where a reserve ceases to exist, the exemption ceases to apply.
- The federal government does not wish to broaden the application of the *Indian Act* tax exemption nor does it wish to create new exemptions.
- Should the conditions for the application of the section 87 tax exemption no longer be satisfied, the federal government is prepared to include transitional provisions to allow for a phasing out of the exemption. The purpose of this transition period is to allow individuals affected by the elimination of the section 87 exemption to prepare and adapt to their upcoming taxable status.
- Under the Canadian tax system, basic personal exemptions, refundable tax credits and graduated tax rates mitigate the impact of taxation on low and moderate income individuals and families.
- If an Aboriginal government chooses to exercise its own powers of taxation, and a tax administration or coordination agreement is reached with Canada, the applicable taxes (or some portion thereof) may be payable to the Aboriginal government, rather than to Canada.

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TAX TREATMENT OF THE TRANSFER OF CAPITAL UNDER THE TREATY OR SELF-GOVERNMENT AGREEMENT

Issue

- What should be the tax treatment of the capital transferred to or recognized as owned by an Aboriginal government under a treaty settlement or a self-government agreement?

Federal Approach

- Capital includes land, assets and the cash component of a Treaty settlement or a self-government agreement.
- A Treaty or a self-government agreement could include provisions allowing for a tax exemption on the transfer of capital made to the Aboriginal government under a treaty or self-government settlement.
- Where an Aboriginal government wishes to distribute some of the cash transferred pursuant to the treaty to beneficiaries, a treaty could include provisions to deem these distributions as if they were made under the treaty settlement. Consequently, under some conditions, these distributions would be exempted from taxation in the hands of the beneficiaries.
- Thereafter, income earned on the investment or use of the capital (e.g., interest), is subject to tax laws of general application, or any relevant provisions of the Tax Treatment Agreement. For example, it may come within the income tax exemption of the First Nation government under paragraph 149(1)(c) of the *Income Tax Act* or the rules governing a settlement trust arrangement.

Principles

- Capital received under a treaty or self-government agreement should not be diminished when transferred to the Aboriginal government.
- The transfer or recognition of ownership should not be taxable.

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TAX TREATMENT OF THE LAND FOLLOWING THE TRANSFER

Issue

- What should be the tax treatment of the land following the transfer of capital received by an Aboriginal government under a treaty settlement?

Federal Approach

- Unimproved lands should not be subject to tax.
- Improved lands which are used for a public purposes, and not for profit or gain, should not be subject to tax.
- Proceeds from expropriation (which are involuntary dispositions) simply replace treaty settlement lands and should not be diminished by being treated as a taxable capital gain.

Principles

- Unimproved land and land used for public or governmental purposes should be protected from diminution through taxation.
- Subject to the exceptions above, the treaty should not preclude real property taxation.