

Tax Treatment Agreements: Federal Approach

Presented to Dehcho First Nations
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Finance Canada
Without Prejudice

Tax Treatment Agreement (TTA)

- ⌘ **For tax provisions that are not appropriate for inclusion in a Final Agreement**
- ⌘ Separate negotiated agreement – not a treaty or land claims agreement
- ⌘ Given force of law at same time as Final Agreement
- ⌘ Guaranteed term – then continues unless and until a party gives notice to terminate
- ⌘ Maintains technical and policy flexibility, in case changes are needed as circumstances change

Subject Matters

- ✂ May cover:
 - ◆ Income tax and sales tax treatment of FN government & its institutions
 - ◆ Gifts to FN
 - ◆ Transfers of FN capital among FN government entities
 - ◆ Rules governing settlement trusts
 - ◆ Other matters

Income Tax and Sales Tax Treatment of FN Governments

✧ **Principle: gov'ts are generally not taxed by other gov'ts on activities carried out on their lands to provide services to their citizens**

- ◆ Income tax exemption for First Nation government as a "public body performing a function of government" (149(1)(c) ITA)
- ◆ GST Refund for purchases made in providing governmental services to citizens on the First Nation's lands – subject to certain conditions
- ◆ Ability to receive and give tax receipts for donations and cultural gifts

Income Tax and Sales Tax Treatment of FN Corporations

- ✖ **Principle: Government-owned corporations may be relieved from tax within that government's geographic jurisdiction**
 - ◆ but should not have tax advantage over competing businesses outside the First Nation's own lands
- ✖ Income tax exemption, subject to income tests and geographic limits (149(1)(d.5) ITA)
- ✖ GST refund (as for FN gov't) for qualifying government entities and activities

Settlement Trusts

- ✘ **Principle: Treaty settlement should be used for intended purposes and preserved for future generations**
- ✘ Settlement Trust can be created to hold, invest and disburse capital transfer payments and income earned on it.
- ✘ Not taxable if it meets conditions specified in Tax Treatment Agreement
- ✘ **Optional:** other tax-effective vehicles can be created under general tax laws to hold and preserve settlement funds

Other Matters

- ✦ TTAs may include provisions regarding the application of provincial/territorial taxes
- ✦ First Nation and its entities may still use any applicable exemptions or relieving provisions under general tax laws