



First Nations Tax Commission
Commission de la fiscalité des premières nations

First Nation Property Taxation Report

First Nations Tax Administrators Association
24th Annual National Forum

October 3 – 4, 2017

Grey Eagle Resort, Tsuut'ina Nation, AB



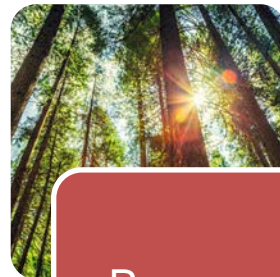
Overview



Changing
Landscape
New
Jurisdictions



2017 First
Nations
Taxation
Highlights



Proposed
Standards



FNG 20
Years
Year Ahead



Changing Landscape

- On August 28, 2017 the government announced the dissolution of INAC and the creation of two new ministries;
- Inspired by the 1996 Royal Commission, INAC is to be replaced by the Department of Crown-Indigenous Relations and Northern Affairs (Minister Carolyn Bennett) and the Department of Indigenous Services (Minister Jane Philpott).
- Consultations over the next six months will feed into the legislation to officially dissolve INAC.



Impact on Taxation

- Mandate letters for each Minister are expected to be issued later this fall, at which time the relationship to the FMA and FNTC will be finalized.
- For s. 83 taxation, FNTC's relationship with INAC remains unchanged at this time. Minister Bennett will still approve s. 83 by-laws recommended by the Commission.
- Anticipation the government will also respond to proposed changes to the FMA.



Jurisdiction-Based Fiscal Relationship

- FNTC and the First Nations Financial Management Board have been advocating for the expansion of a jurisdiction-based component to the First Nations fiscal arrangements for many years
- First Nations would use their expanded revenues for some of their expenditure responsibilities.
- These expenditures would not be included in contribution agreements so they would no longer be subject to federal conditions, reporting requirements, or priority setting exercises.
- No transfer offsets, revenue caps or revenue claw backs.
- Jurisdiction-based relationship is fundamentally different than the transfer based fiscal relationship proposed by INAC to the AFN.
- The current transfer-based fiscal relationship approach that is being proposed does not support nation to nation relations. It does not reduce the scope for the federal government controls.



Meeting on the Jurisdiction-Based Fiscal Relationship Scheduled

- The heads of the FMA institutions and the Lands Board gave a presentation on a jurisdiction-based fiscal relationship at the BC First Nations Summit Fiscal Conference in June 2017.
- The outcome of the conference was adoption of principles leading to series of resolutions supporting a jurisdiction-based fiscal relationship from the Summit, UBCIC and AFN.
- A meeting hosted by the BC Summit will be held on October 13, 2017 at Musqueam and will highlight the jurisdiction-based relationship as a comprehensive fiscal, jurisdictional, governance and institutional reconciliation proposal.



Aboriginal Resource Tax (ART)



ART is a First Nation led proposal supported by the FNTC.

It is a proposal to provide interested First Nation governments with the option of assuming a tax authority over new resource projects on their traditional territories.

Development of the ART concept has proceeded along four paths:

- Discussions with First Nations
- Discussion with Industry
- Discussion with Governments
- Concept Development



Indigenous Land Title Initiative (ILTI)



ILTI is a First Nation-led effort to develop First Nation land title legislation. Opt-In land tenure system to facilitate certainty and economic growth.

Estimated growth over 15 years:

- \$3.8 Billion in increased real estate values
- 27,000 employment opportunities
- Almost 3,000 new homes built
- \$240 Million in property & sales tax revenues
- \$160 Million in infrastructure
- **\$1.1 BILLION REDUCTION IN POVERTY**

Visit ILTI.CA for more information

- Ready-to-use legal framework
- Land Registry
- Research & Benefits of ILTI



First Nations Infrastructure Institution (FNII)



FNII.CA

FNII proposal is being advanced by First Nations and the FNTC. Brings new element to the FMA.

Potential services include:

- Support Projects with Standards and Laws
- Assess and Support Development
- Infrastructure Planning Support
- Project Management Training and Certification.
- Advocacy
- Risk Assessment and Management

Visit FNII.CA for more information



FMA Legislative Amendments

- FNTC is working with FNFA, FMB, and INAC on additional FMA amendment proposals.
- Proposals build on recommendations made by First Nations and fiscal institutions and reflected in 2012 Ministerial Report concerning the FMA.
- FNTC is advancing an amendment that would limit removal from the FMA Schedule.
- This amendment will bring greater certainty in the First Nation tax system for First Nations and their taxpayers.
- The FNTC is also advancing amendments to clarify the delegation of law-making powers, and taxation on jointly-held reserves.
- FNTC will continue to advise the FNTAA and taxing First Nations on the progress.



FMA Regulatory Projects



FMA Borrowing for Treaty and Self-Governing First Nations



FMA Access for Treaty and Self-Governing First Nations

- Property tax jurisdiction using the FMA instead of provincial legislation
- Education support



FMA National Meeting

- Planning is underway for a FMA First Nations National Meeting in the spring of 2018.
- Showcase the successes of FMA First Nations and services provided.
- Consolidate support for expanded First Nations jurisdictions.
- Engage in dialogue about proposed legislative changes and the future of FMA.



Highlights



2017 Property Tax Highlights

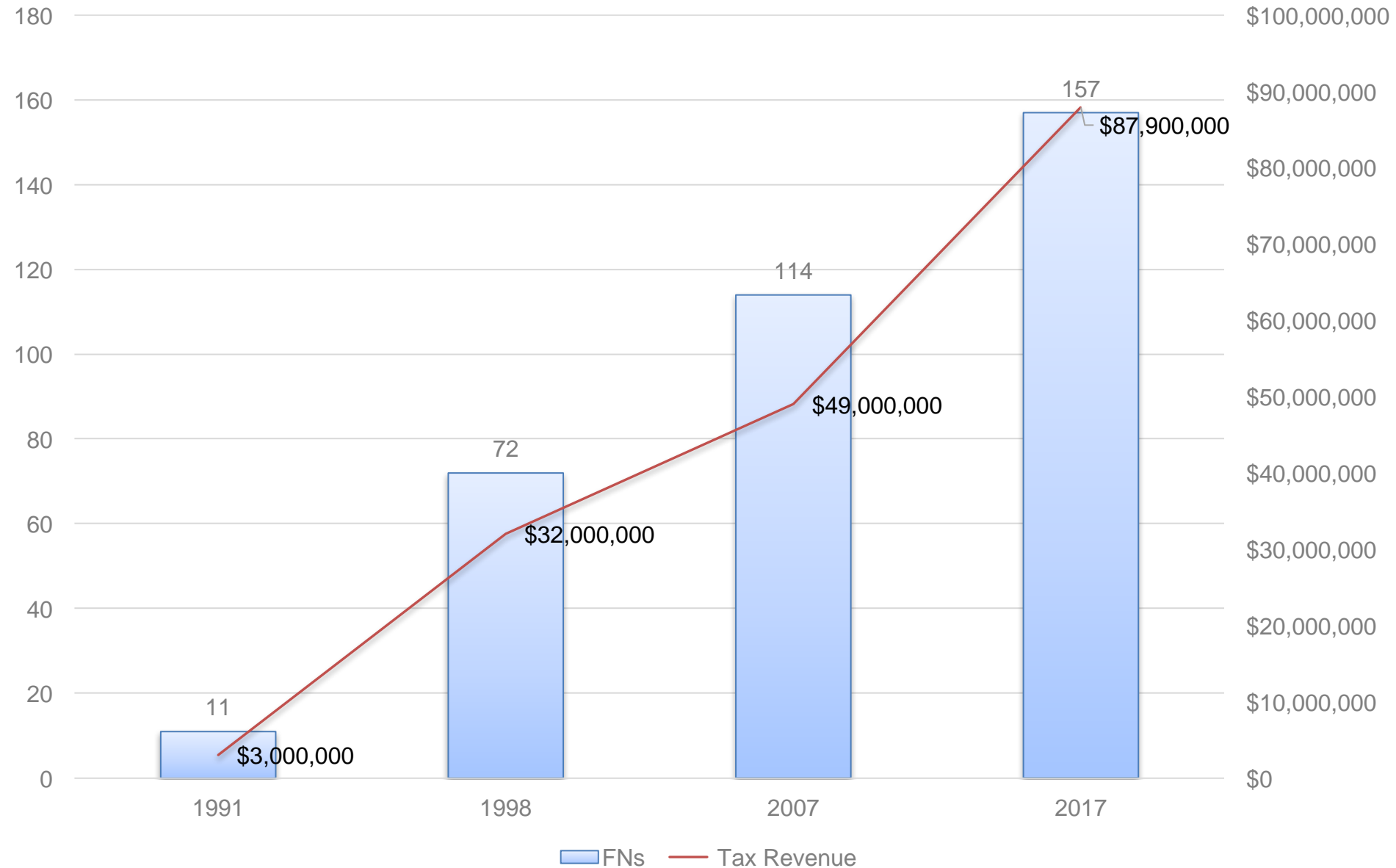
28% or 174 First Nations

in Canada have property tax jurisdiction (157) or are developing taxation (17) through either FMA or *Indian Act*.

- 215 First Nations on the FMA schedule (10 waiting to be added).
- 96 First Nations collecting tax under the FMA, generating \$52.6M.
- 42 First Nations collecting property tax under the Indian Act, generating \$35.3M.
- Of the 31 First Nations developing property tax laws under the FMA, over 42% are situated in Saskatchewan.



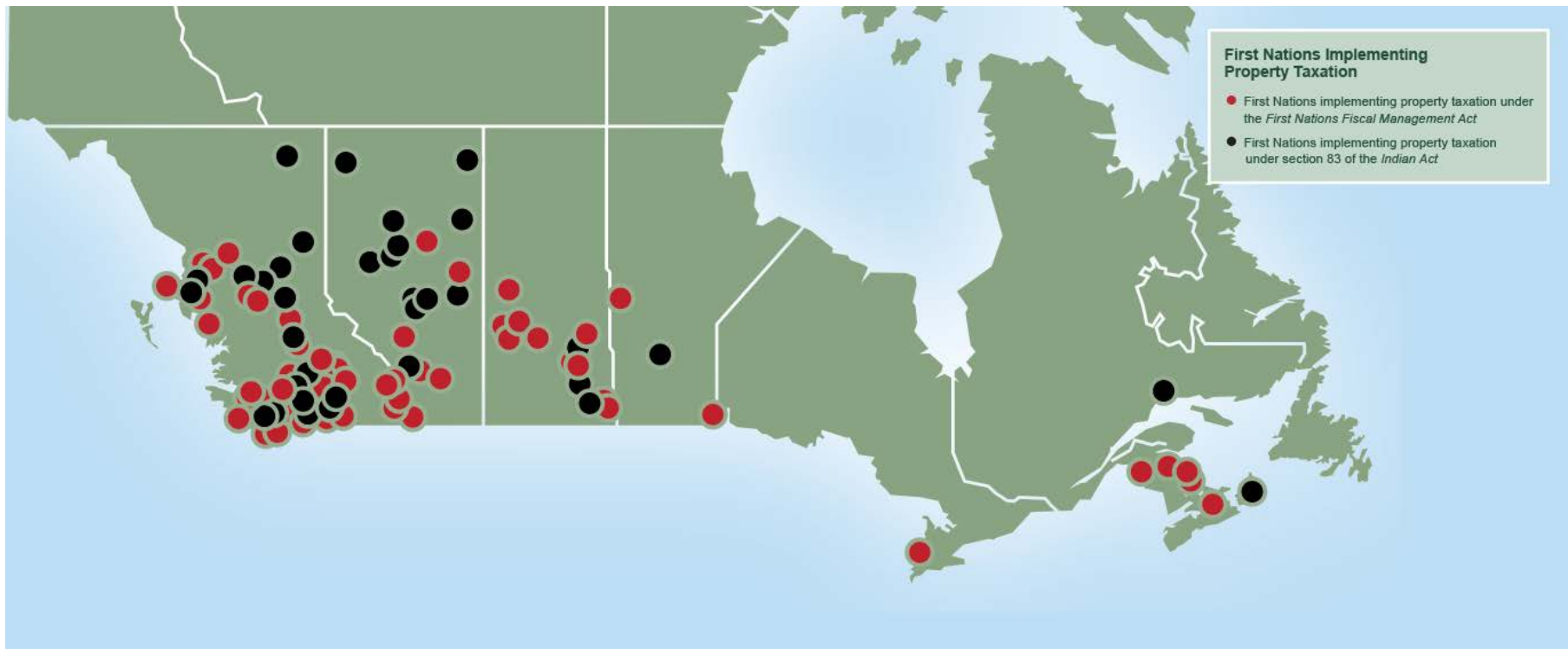
Nearly Three Decades of Growth





First Nation Property Tax By Province

157 First Nations with Property Tax Jurisdiction





First Nation Property Tax - Highlights from Alberta

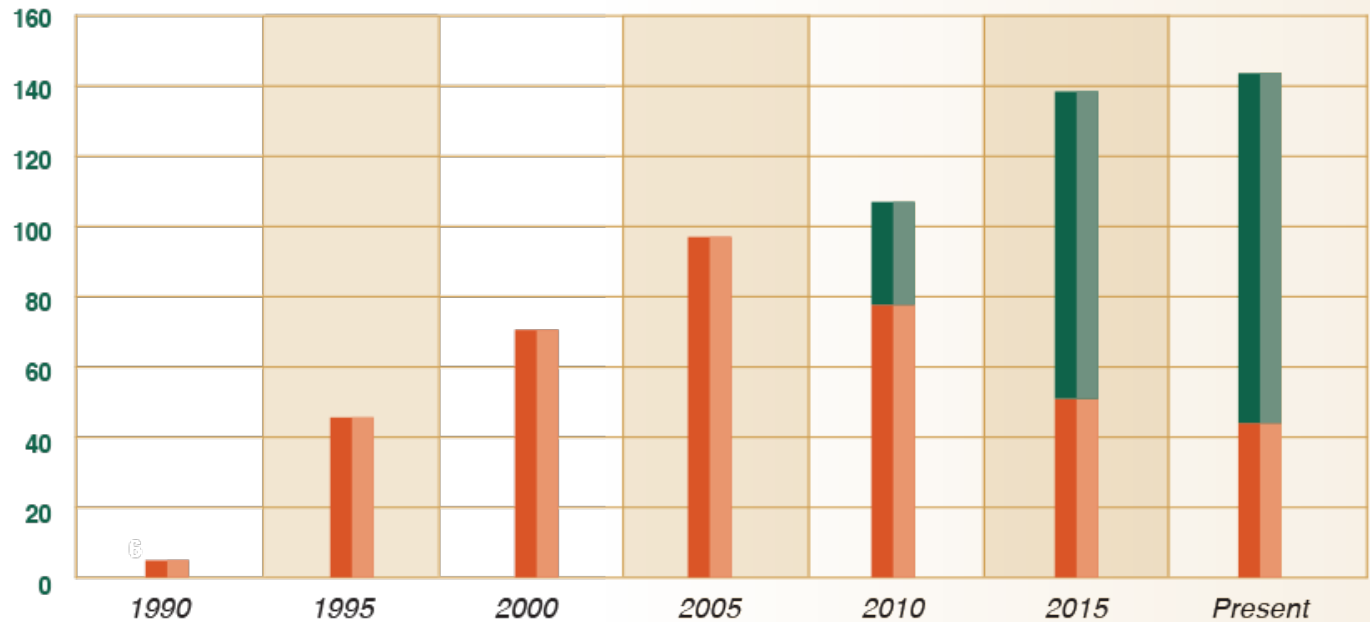
- There are 19 First Nations taxing in Alberta
 - 6 First Nations taxing under the FMA
 - 13 First Nations taxing under s. 83
- In 2017, O’Chiese First Nation became the first to collect taxes from well drilling operations (currently generates about \$100K per year).
- Also in 2017, Enoch Cree Nation became the first to receive a payment of lieu of taxes for a RCMP detachment situated on their lands.



Choosing to Move – First Nations Opting for the FMA

Growth in First Nation Property Taxation

- TOTAL s. 83
- TOTAL FMA





Supporting Law Development FNTC Sample Laws

Property Taxation
and Assessment
laws for:

- BC, AB, SK, MB, ON, NS,
NB, PQ

Annual Rate and
Expenditure Laws

Business Activity Tax
(BAT) Law (Business
Occupancy and Well
Drilling)

Development Cost
Charges Law

Property Transfer
Tax Law

Taxation for the
Provision of Services
Law

Borrowing
Agreement Law

Long-term Borrowing
Law

Taxpayer
Representation to
Council Law

Delegation of
Authority Law



Supporting By-law Development

FNTC Sample By-laws

Property Taxation and Assessment by-laws for First Nations in:

- BC, AB, SK, MB, ON, NS, PQ, NB

Annual Rate and Expenditure By-laws

Business Licensing By-law

Financial Administration By-law

Local Improvement By-law

Telephone Companies Taxation By-law (Ontario, Nfld.)



Standards



New Standards for 2017

Business Activity Tax

- Quarry Tax
- Accommodation Operator

Criteria for Approval of Borrowing Law

- Changes to the unutilized borrowing capacity formula – more capacity for certain First Nations
- PILT Revenue
- Service Taxes Revenue



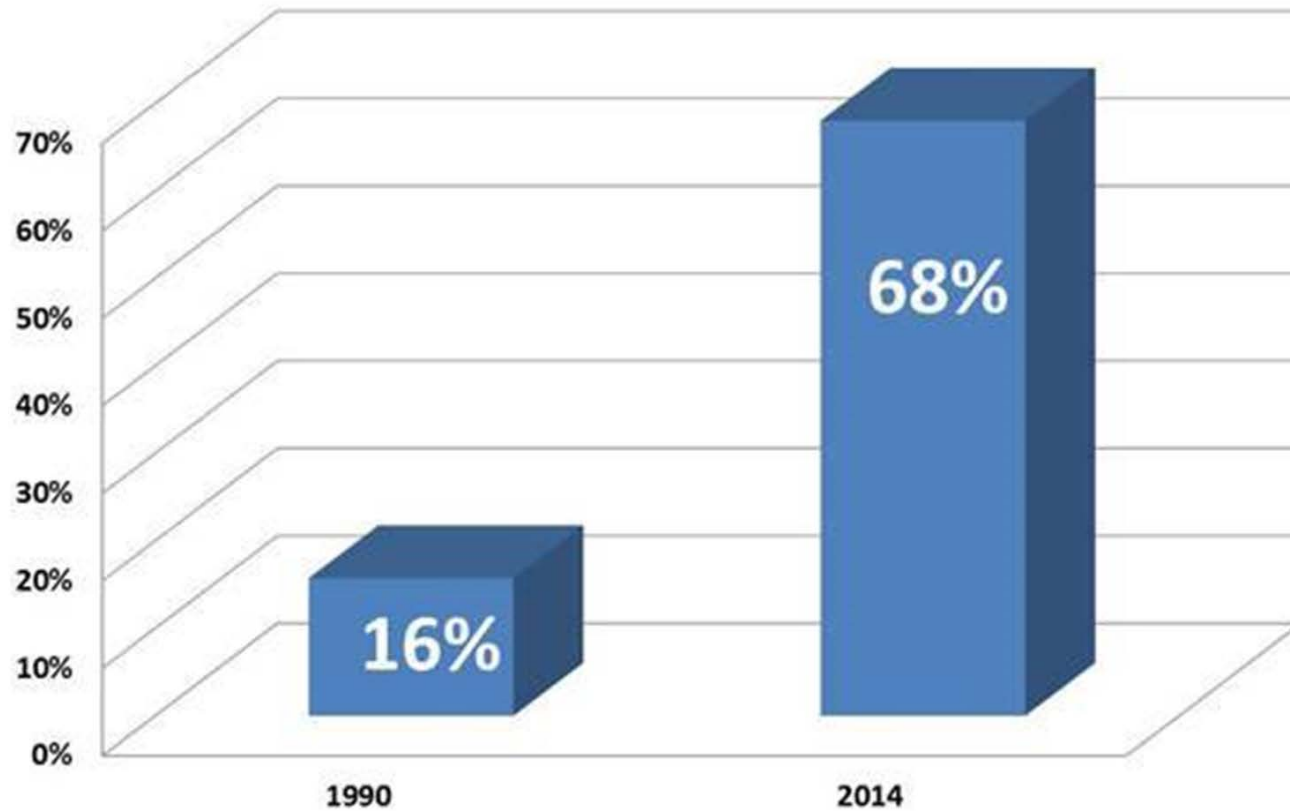
Significance of Service Fees to Fund Services

- Fees are an essential fiscal tool for governments providing services. Having this revenue option means:
 - First Nations can determine how best to pay for services.
 - Fees can provide a more equitable allocation of costs by shifting the burden to those benefitting the service.
 - Entities exempt from taxes, such as other governments, can be charged fees.
 - First Nations can use fees to encourage certain user behaviours, such as water conservation, or waste reduction.
 - First Nations can use fees to recover costs under service agreements.
 - First Nations can include fees in the local revenue account, which promotes transparency and enables better fiscal planning.



The Growth of Service Fees in BC

BC Municipal Services Fees as a Percentage of Total Municipal Taxation





Proposed Standards for Public Input - Fees

Fee Laws

- Proposed Standards
- Three bases for fees
 - Services to Property
 - Services not provided to property (e.g., use of facility)
 - Regulatory process, permit, license or other authorization.
- Fees based on cost recovery – report substantiating fees must be made available.
- Local revenue account must be compensated for the cost of member exemptions. However, government funding arrangements for the service may cover the cost of member exemptions.



Proposed Standards for Public Input – Fees

Fee Laws

- Revenue must be used for the service, and must be accounted for separately.
- Complaints to Tax Administrator Process (Similar to DCC and PTT).
- Maximum interest is 15% per annum and late penalty cannot exceed 10%.
- Enables the Law to provide that unpaid fees can be collected in the same manner as taxes under the property taxation law.



Proposed Standards for Public Input – Expenditure Laws

Expenditure Laws

- Separate budgets for DCCs, Service Tax, and Fee laws.
- Excluding certain revenue in calculating contingency amounts.
- Reserve fund changes (e.g. reserve funds required for service taxes, fees).



FMA Notice Requirements and Standards

- In 2016, the notice requirements in FMA were reduced and the Commission was given a standard-making power for notices.
- This was done to enable the Commission to create different requirements for different types of local revenue laws.
- The purpose of the Notification Standards is to provide for additional notices for specific types of local revenue laws.



Standards in Development – Notification of Laws

Notification

- FMA amended in 2015 to enable FNTC to establish standards for the notification of laws.
- Notification elements currently being reviewed include:
 - Moving the proposed annual tax rates notification requirement from the annual tax rates law standards.
 - Including a proposed annual budget notification requirement.



Standards in Development - Notification of Laws

Notification

- Notification elements currently being reviewed include:
 - Additional notice information requirements (e.g., ensuring that a First Nation capital plan is available for viewing where DCC laws are established).
 - Minimum notice periods for certain types of laws that impose additional tax liabilities or may require greater taxpayer engagement (e.g., 45 days instead of the statutory minimum of 30 days for DCCs, PTTs, BATs, and fees). Additional period can facilitate more public engagement to address issues/concerns where new laws impose increased and different tax liabilities.
 - Additional notification requirements for certain types of laws (e.g., newspaper publication, publication on First Nation website, delivery of notice to taxpayers subject to a PTT, DCC, service tax, or fee law).



Standards in Development – Notification of Laws

Notification

- Proposed notification standards will likely be introduced in December 2017 for public input.



First Nations Gazette



First Nations Gazette

20 years First Nations Gazette

- The First Nations Gazette is the legal voice of First Nations.
- Available online with free access, the FNG serves as the authoritative reference for First Nation laws and notices in Canada.
- First Nations publish their laws and notices in the FNG to support the enforcement and governance of their laws.



FNG Services



Services available from www.fng.ca



PUBLIC NOTIFICATION

- View public notices, or submit your own notice for posting
- e.g. proposed laws, elections, public consultations, land requirements



LEGISLATION DATABASE

- Submit enacted laws, by-laws, and codes for publication
- Search database of FMA laws, Indian Act by-laws (s.81, 83, 85.1), land codes



REFERENCE DOCUMENTS

- View and download sample laws and by-laws, standards, policies, and procedures



DIGITAL ARCHIVE

- Search and view archived material on First Nation law, including digitized versions of the printed FNG



OFFICIAL NAME LOOK UP

- Look up official and variant First Nation band names



USER ACCOUNTS

Register for an account and upload notices for publication



ELECTIONS

View information on upcoming First Nation elections



FNG Statistics

9,410

Total laws, by-laws
and codes published

41,990

2016/2017 Page views

Number of
First Nations
represented

353

2016/2017 FNG visitors

16,111



Two decades of supporting First Nations

- On June 21, 2017, the First Nations Gazette (www.fng.ca) celebrates its 20th anniversary.
- For the past two decades, The First Nations Gazette (FNG) has been supporting the legal voice of First Nations and continues in its role supporting the emerging voice of First Nation self-determination.
- The FNG has grown steadily and has evolved with First Nation governments.
- As First Nation jurisdictions and powers grow, so do their responsibilities, including transparency for their members and providing taxpayers with access to the laws and by-laws that affect them.
- FNG's success and longevity is, in part, due to its recognition that First Nations want to ensure there is a reliable and easily accessible source of legal information available.
- Most importantly, First Nations publish their laws in the FNG to support the enforcement and governance of their laws. Because of this, First Nations have been driving the FNG forward, and have requested new services that have led to many of FNG's technical innovations.



Stay Connected



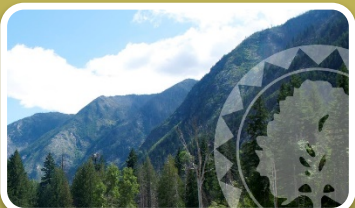
The Year Ahead



Working with First Nations to expand revenue options.



Improving the property tax legislative framework (FMA, regulations, standards, policies, and sample laws/by-laws).



Special Initiatives: ART, ILTI, FNII, and Jurisdiction Based Fiscal Relationship



National Tax Authorities Meeting – Spring of 2018



Workshops

- **November 2nd, 2017** – Edmonton, AB - *Implementing FMA Taxation Systems in Alberta*
- **January 25th, 2018** – Halifax, NB - *Implementing FMA Taxation Systems in Atlantic Canada*
- **February 15th, 2018** – Vancouver, BC – *Expanding FMA Tax Systems to Support a Jurisdiction Based Fiscal Relationship*



Keep in Touch

- Subscribe to the *Clearing the Path* Newsletter – published quarterly
- Download the FNTC app
- Visit the website for the most current news and information

www.fntc.ca





First Nations Tax Commission

Commission de la fiscalité des premières nations

Thank you

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