

Executive Summary

The First Nations Tax Commission (FNTC) 2015 Pre-Budget Submission (PBS) recommends a new approach be taken in addressing First Nation interests in resource and resource infrastructure development. Canada needs strong investment in resource development to financially sustain government programs, to provide quality jobs that support families, and to provide opportunities in remote regions. Canada needs First Nation participation to create a strong investment climate. First Nation participation will never be strong until they are better able to share in the fiscal benefits generated by resource development. Accommodating First Nation interests with resource development will help balance the budget, ensure fiscal sustainability, and provide opportunities to all Canadians.

The FNTC's submission will make the case that: a) while there are many issues pertinent to determining First Nation positions, the *fiscal accommodation* of First Nations is pre-condition for support in almost every case; b) the federal government must take a leadership role with respect to this fiscal accommodation; c) resolving fiscal accommodation will create a better environment for resolving other First Nations issues; and finally, d) the First Nations Tax Commission can, and should, play an important role in designing and implementing a new federal fiscal accommodation strategy related to development.

Why Resource Development Needs First Nations Support

Resource development has an impact on aboriginal lands in numerous regions of the country and First Nations interests need to be respected and addressed. Evidence of First Nations support will improve investor confidence and would help facilitate many projects. In British Columbia, the need for support is clearly critical, in light of the Delgamuukw and Tsilhqot'in decisions. However, resource development companies have flagged this issue in other regions as well. Simply put, the lack of strong First Nations support for resource development is reducing investment, raising project facilitation costs and ultimately reducing economic growth across Canada.

Many people openly wonder why First Nations don't show stronger support for resource projects. Successful projects could create substantial employment and business opportunities for First Nations people, often in areas that have historically provided little opportunity for economic development, with both high rates of poverty and large First Nation population shares. In many cases, First Nations people could be major beneficiaries. Yet, despite this, communities often do not strongly support and may oppose projects.

Of course, there is no single "one size fits all" answer to the question of why support is lacking. Every project is unique and raises unique issues, particularly with respect to environmental impacts and respect for First Nations authority. Each First Nation also has its own unique interests.

However, while there may be no simple, universal solution, resolving how to address fiscal accommodation requirements is a pre-condition to getting strong First Nations support in virtually every case. First Nations governments need more than just job and business opportunities. They want to share in the government revenues that are generated by projects in

their traditional territories. They recognize that if they do not receive a share of the fiscal benefits, it will be much more difficult to advance their collective interests and provide community services. Governments have done a good job in identifying the job and business opportunities created by resource projects. However, those opportunities do not improve First Nation government finances and services. They do not create the resources needed to protect First Nation community interest. In fact, in many cases, they result in provincial and local government tax revenue to support services that are, for the most part, available only off-reserve.

What is Fiscal Accommodation?

The fiscal accommodation is an explicit revenue sharing mechanism to be created for First Nations when a project takes place on their traditional territory. At present, a new resource project will generate substantial tax and royalty revenues for the resident federal, provincial and local governments. However, in most cases, the First Nations upon whose traditional territory these projects occur, receive only an annual cash transfer from the federal government that is not linked to the growth of revenues caused by the project. First Nations are aware of this and assert that transfers are losing ground to inflation and population growth. The Commission believes that resource development initiatives can only be advanced if a better mechanism is developed for sharing associated revenue growth.

The fiscal accommodation issue goes deeper. In some provinces, First Nations people living on reserve are the only people specifically excluded from having their service costs subsidized by resource royalties. There is also apprehension by First Nations that, under existing arrangements, any revenues shared by companies or provincial governments with First Nations will simply lead to reductions in federal transfers to First Nations. Provinces may also be reluctant to share revenues for this same reason. If revenue sharing leads to reduced federal transfers, it could lead to the gradual transfer of expenditure responsibilities for First Nations services. This apprehension is particularly acute in provinces with large First Nations populations.

Until fiscal accommodation is achieved, the Commission believes that project facilitation will be compromised, investment will be slowed and all parties will lose. Many otherwise viable projects will not go ahead. There will be fewer new revenues for the federal, provincial and First Nation governments.

What Is Currently Available to Provide for Fiscal Accommodation?

Fiscal accommodation is being addressed in different way in different parts of the country. Some examples are listed below:

1. In British Columbia, mining tax revenues and other resource related taxes are routinely shared by the Province with First Nations for new projects or project expansions.
2. In other provinces, governments may make side agreements so that training funds or other program funding is earmarked for the resident First Nation at a site.
3. In some cases, a tax-like payment is applied whereby companies provide revenues or benefits-in-kind to a First Nation in order to ensure support.

4. In every province, First Nations have the option of implementing property tax or a business activity tax on those aspects of a project that are located on reserve lands.

The Limitations of the Status Quo Approach

The current accommodation mechanisms are limited. They are not available in all situations. The consequences on federal-provincial relations are not being acknowledged.

1. Royalty revenues are not well suited to the fiscal needs of First Nations. While they can be substantial sums, they are better suited to a large and more diversified revenue base. They are too volatile and too vulnerable to provincial policy change, and not robust enough to provide a fiscal accommodation in all relevant situations.
2. Royalties are provincial revenue but most government services to First Nations are a federal expenditure responsibility. If accommodations continue to be primarily provincially funded, this will exacerbate what the Parliamentary Budget Office forecasts will be a widening fiscal imbalance between the two orders of government.
3. Related to the point above, if offsets are applied to revenues transferred from provincial revenue space, it will result in federal monies leaving that province and a reduction in the benefit received by the First Nations.
4. At present, the use of First Nations property tax, or other taxes that would be available under the *First Nations Fiscal Management Act* (FMA), only work in an on-reserve context. Its application could be expanded by expanding the application of the FMA or through transition of lands through a proposed First Nations Property Ownership Act, both of which would require federal legislation.
5. A provincial revenue is not well suited to providing a fiscal accommodation for projects that span multiple jurisdictions.
6. A piecemeal approach to the fiscal accommodation could ultimately create inconsistencies of treatment among provinces and among First Nations.

The FNTC Proposal

The FNTC proposes that the Federal government make a commitment to support the fiscal accommodation of First Nations with respect to resource projects occurring on their traditional territory. It is time for governments to acknowledge that jobs and business opportunities will not on their own address the need for fiscal accommodation. If properly supported it would lead to improved opportunities, services and infrastructure in First Nation communities. It would improve the environment for concluding agreements between provincial and First Nation governments by addressing provincial apprehensions. It would help address the issue of the fiscal imbalance. It would address the issues raised by projects that span multiple provinces. Most importantly, it would ensure resource projects empower First Nation governments.

The federal government should support a fiscal accommodation in two ways. First, it should create revenue room for First Nations to support a revenue neutral First Nations tax. A preliminary suggestion is that this could be accomplished through the development of a federal tax credit. A tax credit could be designed to help ensure transparency for companies and to maintain tax competitiveness. Second, the federal government should review its policies to

ensure that no provincial government is penalized for revenue sharing with First Nations, beyond the revenues it foregoes through sharing. At present, there is substantial risk of such penalization because of the potential for sharing to lead to reduced transfers to First Nations, and also because of the treatment of shared revenues within the Equalization program.

The FNTC would like to work with the federal government to make a fiscal accommodation work. The Commission, and its predecessor Indian Taxation Advisory Board, has a long history of working with First Nations in establishing First Nation taxation and related fiscal issues. We have a broad base of knowledge of the unique fiscal issues that arise at the First Nations/provincial level which could help facilitate agreements between provinces and First Nations. FNTC's work on service agreements and First Nation expenditure laws is particularly important in this regard. Working with the FNTC, more than 150 First Nations have successfully developed property tax systems. Many of these First Nations have since entered into service agreements with local and provincial governments that have given all parties a stake in bringing investment to their region.

The FNTC is prepared to help develop and implement a new fiscal accommodation policy. The Commission has worked with First Nations to develop sophisticated tax collection systems, expenditure laws and fiscal planning, and greatly improved their services and infrastructure through financing and supportive service agreements with local and provincial governments. This entire administrative infrastructure and related capacities is available to help advance a new approach on how First Nation interests can be better accommodated in resource development.