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2021 Annual By-laws Bulletin

The Annual By-laws Bulletin is issued by the First Nations Tax Commission (“FNTC”) to assist First Nations tax administrators in the development and submission of annual By-laws made under s.83 of the *Indian Act*.

Highlights

- National rate of inflation for the 2021 Taxation Year is 0.73%.
- Updated COVID-19 Pandemic Emergency Response

Updated Covid-19 Pandemic Emergency Response

As with last year, Commission will continue to ensure First Nations have a great degree of flexibility in responding to the impacts of the pandemic. This includes facilitating the use of temporary tax relief measures, accommodating alternative forms of public meetings, and addressing potential local revenue relief from federal government programs.

Annual Tax Rates By-laws

The annual tax rates by-law is comprised of the by-law and the Schedule which identifies the tax rates for each property class.

Tax Rate Setting in the First Year

(Section 6 of the Policy for First Nation Annual Tax Rates By-laws, 2020 “Rates Policy”)

In the first year that a First Nation exercises property taxation, tax rates must not exceed those set by the former taxing authority in the *current year*; or where there is no former taxing authority, tax rates must not exceed those set by the reference jurisdiction in the *current year*.

Note - The reference jurisdiction is an adjacent local government jurisdiction. For assistance in determining the appropriate reference jurisdiction, please contact an FNTC advisor.

Tax Rate Setting in Subsequent Years
(Section 7 of the Rates Policy)

In the second and all subsequent years that a First Nation exercises property taxation, tax rate setting must meet the requirements of section 7 of the Rates Policy.

Average Tax Bill Comparison
(Section 7 of the Rates Policy)

Tax rates can meet the requirements in section 7 of the Rates Policy in one of two ways:

1. National inflation rate method - the proposed rates in each class will lead to an average tax bill change not exceeding the national rate of inflation. (Please note, the national rate of inflation for the 2021 tax year is 0.73%); or
2. Reference Jurisdiction comparison method - the proposed rates in each class will lead to an average tax bill change not exceeding the average tax bill change in the same class of the reference jurisdiction. First Nations using this method must submit assessment data and tax rate information for the reference jurisdiction.

In using the average tax bill methods described in 1 and 2 above, new properties must be excluded, and the “average” tax bill can be expressed in one of two ways:

1. Mean Tax Bill: divide the total number of folios (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) into the total revenue collected from that property class. For example, if \$100,000 in taxes were collected from 100 residential properties, the average tax bill would be \$1,000 per residential property; or
2. Median Tax Bill of a Representative Taxpayer: place all tax bills in order (excluding properties not occurring in both years, and properties whose value have changed due to new construction, additions to land, assessment appeals changes, or reference to provincial regulation) from the lowest to the highest in each property class, and then find the tax bill of the representative taxpayer that is exactly in the middle. For example, the median of the following string of numbers is 45: (2, 32, 33, 45, 60, 62, and 70). If there is an even number of folios, the median is the average of the middle two values.

Reference Jurisdiction Rate-Setting
(Section 7 of the Rates Policy)

Reference jurisdiction rate-setting involves the First Nation setting tax rates in each class that are identical to the reference jurisdiction’s rates in the current and previous year, and also requires the First Nation to use the same assessment practices as the reference jurisdiction. First Nations wishing to move from using average tax bill comparison to using this method should review section 11 of the Rates Policy and consult with an FNTC advisor.

Justification for Additional Rate Increases
(Section 8 of the Rates Policy)

Where tax rates fail to meet the requirements of section 7, First Nations can seek to justify tax rate increases on one (1) or more of the following bases:

1. there is a significant increase to the cost of local services such as water, sewer, waste collection, fire protection, and roads;
2. the proposed rates are consistent with a First Nation's reference jurisdiction transition plan; and
3. there is taxpayer support within the affected class.

Cost Increases - First Nations anticipating significant increases in the cost of services can justify tax rates by providing information to the FNTC in the form of a signed service agreement showing cost increases, or a letter provided by the First Nation's chief financial officer outlining the anticipated increase in the cost of services.

Reference Jurisdiction Transition Plan – First Nations who intend to transition to reference jurisdiction rate-setting must establish a transition plan before the applicable taxation year. This includes notice to taxpayers of the transition, and a public meeting to describe and discuss the transition plan. Tax rates that are consistent with the transition plan can be justified under Section 9 of the Rates Policy.

Taxpayer Support – First Nations may seek justification for tax rate increases under Section 9 of the Rates Policy on the basis of taxpayer support. First Nations must provide letters of support from individual taxpayers or their associations representing at least 50% of the taxpayers in the property class and holding at least 50% of the total assessed value in the class to which the tax rate increases under Section 8 will be applicable.

In seeking justification for the proposed rates under rationale #1 or #2, a First Nation must give prior notice to its taxpayers of the proposed rates and the reason(s) for the increase. This requires a justification description in the notice; and notification by using the First Nation's website, the *First Nations Gazette* ("FNG") website or by holding a public meeting.

Justification on the Basis of Transition to Reference Jurisdiction Rate Setting
(Section 9 of the Rates Policy)

Section 9 of the Rates Policy applies only where First Nations have included a property tax transition provisions in their property taxation By-law. The section enables First Nations to set rates in accordance with their transition process, rather than in accordance with section 7.

First Nation tax administrators should contact the FNTC as early as possible if the First Nation intends to provide justification for exceeding sections 8-9 of the Rates Policy.

Minimum Tax
(Section 4 of the Rates Policy)

Most First Nations have provisions in their property taxation by-laws that enable the use of a minimum tax. A minimum tax means that a minimum amount of tax is levied on a property, even though its assessed value would result in a lower amount of tax.

The minimum tax, if any, must be set each year within the First Nation's tax rates by-law. The Rates Policy provide that a minimum tax must not exceed one hundred dollars (\$100) except where required to create a fair taxation regime because of one or more of the following circumstances:

1. to harmonize with minimum tax amounts established in the relevant province or in the reference jurisdiction; or
2. the First Nation's cost of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

First Nations may have additional provisions governing the setting of minimum taxes in their property taxation by-law.

Timing of Annual Tax Rates By-law Enactment

The First Nation's property taxation by-law sets its own date when annual tax rates by-laws must be made, when tax notices are to be sent, and when taxes are due. When developing an annual tax rates by-law these dates must be considered to ensure compliance with the timelines established in the First Nation's property taxation by-law.

The FNTC recommends that First Nations submit their annual by-laws at least 15 days in advance of the date tax notices are to be issued. This will allow sufficient time for the review and approval of your First Nation's annual by-laws. Tax administrators should submit signed by-laws and all supporting materials to the s.83 Registrar as soon as practicable.

Notification of Annual Tax Rates By-laws
(Section 10 of the Rates By-law Policy)

First Nations must give notice of their entire proposed annual tax rates by-law, including its schedule(s), prior to the by-law submission.

The notice requirement can be met by:

- posting the proposed annual tax rates by-law on the *First Nations Gazette* ("FNG") or on the First Nation's website; or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of council to discuss the proposed by-law.

Giving notice of the entire proposed annual tax rates by-law is consistent with best practices in property tax administration and will enable stakeholders to view provisions before a by-law is approved (e.g., minimum tax).

Where a First Nation seeks to provide justification for a tax rate under paragraph 8.1(a) or (b) of the Rates Policy, the First Nation must provide a description of the justification in the notice.

First Nations who wish to use the FNG website to post their annual by-laws, can email the final Word version of the proposed annual by-law to editor@fng.ca.

Information Requirements for the Review of Tax Rates By-laws

The FNTC requires information to be submitted to review and approve by-laws. This information supports proper decisions, ensures the First Nation property tax system remains transparent, and maintains taxpayer confidence.

The FNTC may request the following information to accompany the First Nation's annual by-laws:

- the summary assessment roll for the previous year and current taxation year;
- the number of property occurrences within each property class (this usually appears on the summary assessment rolls provided by the First Nation's assessor);
- the amount of new construction reflected in the current assessment roll, as determined by comparing the folio counts in this year to last year;
- the reference jurisdiction's tax rates for the previous and current taxation year.

Tax Notices

First Nation's property taxation by-law sets out the date tax notices are to be sent, and tax notices can only be issued after the Minister approves the annual tax rates by-law. Confirmation of by-law approval is sent to First Nations by the s.83 Registrar. The s.83 Registrar can be reached at (613) 789-5000 ext. 204 or by email to lrichards@fntc.ca

Annual Expenditure By-laws

(Policy for First Nation Expenditure By-laws, 2020 "Expenditure Policy")

The annual expenditure by-law is comprised of the by-law, the annual budget as the Schedule, and may include any required appendices.

Revenues

The annual budget estimates of property tax revenues and estimates all other local revenues such as payments-in-lieu of taxation ("PILT"), penalties, interest and fees.

Payments in Lieu of Taxation

Local revenues include moneys raised under a local revenue by-law as well as payments received by a First Nation in lieu of taxation (PILT). A PILT is typically made by other

governments or government entities like Crown corporations that occupy interests on reserve. Examples of PILTs include payments from the federal government for federal properties, BC Hydro's Community Development Fund, or grants payments made in lieu of railway taxation.

Expenditures

(Schedule to the Expenditure Policy)

Local revenue budgets must identify planned expenditures using the expenditure categories and sub-categories outlined in the FNTC *Expenditure Categories for the Annual Expenditure By-law Budget* which includes explanatory notes for each expenditure category and sub-category.

Contingency Amounts

(Subsection 2.4 of the Expenditure Policy)

The Expenditure Policy requires the local revenue annual budget include a contingency amount between 1% and 10% of the total budgeted local revenues (i.e., revenues raised under a s.83 rates by-law or payments made in lieu of property tax) *excluding*:

- Any amounts transferred from local revenues to a reserve fund in the current year;
- Any amounts transferred from a capital reserve fund into the current year's revenues; and
- Any revenues from a local improvement tax by-law.

Service Agreements

(Subsection 2.3 (a) of the Expenditure Policy)

Where a First Nation has service agreements with third-party service providers and amounts from the local revenue account are budgeted to be used to pay for services under the agreement, the Annual Budget must list each service agreement, the amount payable under the agreement for the year, and a brief description of the service provided. These expenditure amounts are also included in the appropriate budget expenditure category.

Reserve Fund Purposes Statement

(Section 6 of the Expenditure Policy)

The Expenditure Policy requires that where a First Nation is establishing a reserve fund, the expenditure by-law must contain a provision which establishes the reserve fund and states the purposes of the new reserve fund.

Establishing Reserve Funds

(Section 5 of the Expenditure Policy)

Reserve funds must be established in a First Nation's annual expenditure by-law and must comply with reserve fund usage provisions in the First Nation's property taxation by-law. Reserve funds must also meet the criteria set out in sections 5 and 6 of the Expenditure Policy, including the requirement for a plan. All reserve fund balances are reported in an appendix to the annual budget.

Contingency Reserve Funds *(Section 7 of the Expenditure Policy)*

Contingency reserve funds may be used by governments to cover unforeseen expenditures, or to stabilize the temporary impacts of cyclical local revenue decreases.

- New contingency reserve funds must be established in the expenditure by-law.
- A maximum of 10% of budgeted local revenues in the current year can be transferred into the contingency reserve fund.
- Contingency reserve funds can grow over time but must not exceed 50% of the budgeted current year's local revenues.
- Contingency reserve fund balances are reported in an appendix to the annual budget.

Timing of Annual Expenditure By-law Enactment

First Nations typically enact their annual expenditure by-law at the same time as their annual tax rates by-law. The date when a First Nation's annual rates by-law must be enacted is set out in the First Nation's property taxation by-law.

The FNTC recommends that First Nations submit their annual by-laws at least 15 days in advance of the date tax notices are to be issued. This will allow sufficient time for the review and approval of your First Nation's annual by-laws. Tax administrators are encouraged to submit signed by-laws and all supporting materials to the s.83 Registrar as soon as practicable.

Notification of Annual Expenditure By-laws

Similar to the notification for the annual tax rates by-laws, the Policy requires First Nations to provide notice of the entire annual expenditure by-law, including the budget and appendices (if applicable), prior to the by-law being submitted to the Commission for review and approval.

The notice requirement is the same as for the annual tax rates by-law, and can be met by:

- posting the proposed annual expenditure by-law on the FNG, or on the First Nation's website; or
- holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the proposed by-law.

First Nations who wish to use the FNG website to post their annual by-laws, can email the final Word version of the proposed Annual Tax Rates By-law and Annual Expenditure By-law to editor@fng.ca.

Amendments to the Annual Budget during the Tax Year

First Nations who wish to amend their local revenue budgets in the current year must amend their Annual Expenditure By-law and submit the by-law for FNTC review and approval.

Amendments to the local revenue budget are required when a First Nation wishes to make an expenditure that is not included in the local revenue budget or wishes to amend a budget amount.

Comments or Questions?

Should you have comments or questions concerning this Bulletin, please contact an FNTC advisor or reach us at mail@fntc.ca.