

## **FINANCIAL ADMINISTRATION BY-LAW POLICY**

### **PART I**

#### **PREAMBLE**

**WHEREAS:**

- A. Subsection 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenues through property taxation and, ancillary to these powers, make by-laws to establish the financial administration structure for First Nation funds;
- B. A Memorandum of Understanding (MOU) between the First Nations Tax Commission (FNTC or Commission) and the Minister of Aboriginal Affairs and Northern Development provides for the FNTC to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the MOU and to assist First Nations to adopt financial systems that will provide confidence in the First Nation financial systems and support economic growth through the generation of stable local revenues.

### **PART II**

#### **PURPOSE**

This policy sets out the requirements that must be met in financial administration by-laws enacted under subsection 83(1) of the *Indian Act*. This policy is used by the Commission in its review and recommendation for approval of First Nations' financial administration by-laws, pursuant to subsection 2.1 of the MOU between the Commission and the Minister of Aboriginal Affairs and Northern Development.

The Commission recognizes that each First Nation's financial administration system operates within the broader context of its fiscal relationships with other governments. This policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

### **PART III**

#### **AUTHORITY AND PUBLICATION**

This policy is established pursuant to subsection 1.2 of the MOU between the Commission and the Minister of Aboriginal Affairs and Northern Development.

### **PART IV**

#### **APPLICATION**

This policy applies to every financial administration by-law submitted to the Commission for review and recommendation pursuant to the MOU.

### **PART V**

#### **DEFINITIONS**

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c.I-5, and the regulations enacted under that Act;

“band administrator” means the employee or contractor appointed by council as the senior administrative officer for the First Nation;

“budget” means the annual budget of the First Nation including all budgeted revenues and expenditures of the First Nation for the fiscal year;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“conflict of interest” means any circumstance where an individual who is a member of Council or the Board, or is otherwise employed by the First Nation or one of its departments, makes use of that office or employment for personal gain, the personal gain of family members or to the detriment of the interests of the First Nation;

“Council” has the meaning given to that term in the Act;

“FAB” means a financial administration by-law enacted under paragraph 83 of the Act;

“family member” means a spouse, including a common law spouse, children, parent, brother, sister, father-in-law, mother-in-law, uncle, aunt, grandparent, son-in-law, daughter-in-law, and also includes any relative permanently residing in the person household;

“financial administration” includes financial management, financial performance and accountability;

“financial competency” means the ability to read and understand financial statements that present accounting issues reasonably expected to be raised by the First Nation’s financial statements;

“financial institution” means a bank, credit union or trust company;

“First Nation” means a band as defined under the Act;

“FMA” means *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“generally accepted accounting principles” means generally accepted accounting principles of the Canadian Institute of Chartered Accountants, as amended or replaced from time to time;

“officers” means the positions of band administrator, senior financial officer, and tax administrator established in a FAB;

“person” means an individual or agent or trustee of a person;

“personal gain” means financial gain arising from the personal and business interests of an individual and includes, but is not limited to, employee benefits, contract benefits, educational, medical, or other social benefits, honoraria, payment of any money, allotment, leasing or other grant of an interest;

“resolution” means a motion passed and approved by a majority of Council present at a duly convened meeting;

“senior financial officer” means the manager or administrator responsible for the day to day management or administration of the First Nation’s financial administration systems;

“tax administrator” means the tax administrator appointed under the First Nation’s taxation by-laws;

“taxation account” means account(s) for the purpose of holding, expending, reporting and accounting for property taxation revenues.

“Taxation By-law” means a by-law or law for the taxation of property, activities or development cost charges enacted by the First Nation pursuant to section 83 of the Act or section 5 of the FMA; and

“taxation revenues” means revenues collected by the First Nation pursuant to a Taxation By-law.

Except as otherwise provided in this policy, words and expressions used in this policy have the same meaning as those used or defined in the Act.

## **PART VI POLICY**

### **General Policy Statement**

1. The Financial Administration By-law (FAB) must reflect best practices in financial administration and should meet or exceed the standards for financial management systems established by the First Nations Financial Management Board.

### **Public Notification**

2. Council, at least thirty (30) days before making its initial FAB, or making a significant amendment to an existing FAB, shall
  - (a) publish notice of the proposed FAB or significant amendment on the *First Nations Gazette* website;
  - (b) post the notice in a public place on its reserve lands or post the notice on the First Nation website; and
  - (c) send a copy of the notice to the FNTC.

### **Scope of Financial Administration By-laws**

3. The FAB applies to the financial administration of a First Nation.

### **Financial Administration Roles and Responsibilities**

#### *Council*

4. All FAB's must set out the responsibilities of Council and include
  - (a) all matters relating to the financial administration of the First Nation;
  - (b) the approval of Council policies, procedures and directions;
  - (c) the appointment of members and the chair of the Finance and Audit Review Committee;
  - (d) the approval of budgets and annual financial statements of the First Nation;
  - (e) the approval of borrowing of the First Nation;
  - (f) the setting of documented policies, procedures and directions relating to the financial administration of the First Nation; and
  - (g) the setting of documented policies or procedures for the acquisition, safeguarding and management of the assets of the First Nation.

#### *Finance and Audit Review Committee*

5. The FAB must include the following provisions in respect of the Finance and Audit Review Committee (the Committee):
  - (a) that the FAB establish a Finance and Audit Review Committee;
  - (b) that the Committee must not have fewer than three (3) members, a majority of whom must have financial competency;
  - (c) that at least twenty-five percent (25%) of the Committee must be comprised of Council members; and
  - (d) that the Committee procedures be outlined and include what constitutes quorum, what happens in the event of a tie, how often the Committee will meet, the roles and responsibilities of the Committee and its members, the appointment and removal of members, the reporting requirements of the Committee to Council, the term of office, and the appointment of a chair.

#### *Officers*

6. The FAB must require that Council appoint a band administrator and that the appointment include the following:
  - (a) terms and conditions of the appointment;
  - (b) roles and responsibilities of the band administrator; and
  - (c) reporting requirements for the band administrator.

7. The FAB must require that Council appoint a senior financial officer and that the appointment include the following:

- (a) terms and conditions of the appointment;
- (b) roles and responsibilities of the senior financial officer; and
- (c) reporting requirements for the senior financial officer.

8. The FAB must require that Council of a First Nation exercising its property taxation jurisdiction appoint a tax administrator and that the appointment include the following:

- (a) terms and conditions of the appointment;
- (b) roles and responsibilities of the tax administrator; and
- (c) reporting requirements for the tax administrator.

### **Fiscal Year**

9. The FAB must set out the First Nation's fiscal year. This is normally from April 1 of the current year until March 31 of the following year.

### **Annual Budget**

10. The FAB must require the following provisions in respect of the annual budget:

- (a) that the First Nation prepare an annual budget;
- (b) that the annual budget include all operations of the First Nation;
- (c) that the annual budget be approved by Council;
- (d) that a budget schedule for the First Nation be set, including when the budgets will be approved by Council and how budgets may be amended;
- (e) that the First Nation membership be provided access to the annual budget and outline how access may be obtained; and
- (f) whether budget deficits are permitted or whether balanced budgets are required.

### **Annual Audit**

11. The FAB must include the following provisions in respect of the financial audit:

- (a) that the annual financial statements be audited by an auditor;
- (b) that in instances where the First Nation has a taxation account, there is a requirement for a separate audit of the First Nation's taxation account;
- (c) that the auditor conduct the audit of the annual financial statements in accordance with generally accepted audit standards established by the Canadian Institute of Chartered Accountants, and with any applicable Aboriginal Affairs and Northern Development Canada reporting requirements;
- (d) that the appointment of the auditor include the term of appointment, and the requirement for the auditor to be independent, in good standing with the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada or the Society of Management Accountants of Canada, and be licensed to practice public accounting in the province in which the majority of the reserve lands of the First Nation are located;
- (e) that the auditor be given access to all information or records of the First Nation on request;
- (f) that the audited annual financial statements be provided to the Finance and Audit Review Committee not more than one hundred and five (105) days after the fiscal year-end for which the statements were prepared;

- (g) that the Council must review and approve the audited annual financial statements not more than one hundred and twenty (120) days after the fiscal year-end for which the statements were prepared;
- (h) that Council review and approve the audited annual financial statements; and
- (i) that the First Nation membership be provided access to the annual audited financial statements and outline how access may be granted.

### **Financial Reporting**

- 12. The FAB must require that all accounting practices of the First Nation comply with generally accepted accounting principles.
- 13. The FAB must set out reporting requirements for monthly and quarterly financial information and may include timelines for completion and the approval process.

### **Financial Institution Accounts**

- 14. The FAB must include the following provisions in respect of financial institution accounts:
  - (a) that all accounts opened by the First Nation must be in the name of the First Nation, opened in a financial institution and authorized by Council;
  - (b) that the taxation revenue, in the case where the First Nation has a Taxation By-law (enacted pursuant to section 83 of the *Indian Act*) or Taxation Law (enacted pursuant to the FMA), be placed in a separate taxation account and any interest earned from that account also be deposited into the taxation account;
  - (c) that where reserve funds are established, the purpose of the reserve fund, conditions of its use, and contributions and withdrawals from the fund be outlined in the FAB;
  - (d) that the conditions upon which expenditures may be made from the First Nation accounts, other than the taxation account, be set out; and
  - (e) that any expenditure from the taxation account be authorized under an Expenditure By-law (enacted pursuant to section 83 of the *Indian Act*) or Expenditure Law (enacted pursuant to the FMA).

### **Loans**

- 15. The FAB may specify that Council, by resolution, or where required, by a Taxation By-law, may make, or allow to be made, a loan from First Nation funds.

### **Borrowing and Debts**

- 16. The FAB may specify that Council, by resolution, from time to time, or where required, by a Taxation By-law, on behalf of the First Nation
  - (a) borrow money for operational purposes of the First Nation; and
  - (b) issue bonds, debentures, and other debt obligations for capital purposes of the First Nation.

### **Collection of Debts**

- 17. The FAB may specify that Council seek, or cause to be sought, agreement for a payment plan from each person or entity that owes money to the First Nation.

### **Tendering Requirement**

- 18. The FAB may specify requirements for the awarding of contracts, bidding and tendering requirements, and the management of capital projects.

**Conflicts of Interest**

19. The FAB must set out conflict of interest rules regarding members of Council, the Finance and Audit Review Committee, the band administrator, the senior financial officer, and other employees of the First Nations.

**Suspension or Dismissal**

20. The FAB must specify any disciplinary actions the Council may take in the event that conflict of interest rules have been breached.

**PART VII  
COMING INTO FORCE**

This policy is established and in effect as of June 20, 2012.

**PART VIII  
ENQUIRIES**

All enquiries respecting this policy should be directed to:

First Nations Tax Commission  
321 – 345 Chief Alex Thomas Way  
Kamloops, BC V2H 1H1  
Telephone: (250) 828-9857