



First Nations Tax Commission
Commission de la fiscalité des premières nations

First Nation Property Taxation Report

First Nations Tax Administrators Association
21st Annual National Forum

September 23 – 25, 2014
Songhees Nation, BC



Overview

- First Nations Tax Commission
- First Nation Property Tax – 2014
- FNTC and FNTAA Relationship
- Current Issues and Initiatives
- Year Ahead



Introduction

- First Nations Tax Commission created in 2005 by the *First Nations Fiscal Management Act*.

Mission: Assist First Nation governments build and maintain fair and efficient property tax regimes, and to ensure those First Nation communities, and their taxpayers alike, receive the maximum benefit from those systems.



Introduction

- FNTC operational on July 1st, 2007.
- Shared Governance Commission
- Commissioners:
 - C.T. (Manny) Jules, Chief Commissioner
 - David Paul, Deputy Chief Commissioner
 - Bill McCue
 - Céline Auclair
 - Leslie Brochu
 - Lester Lafond
 - Ken Marsh
 - Terry Nicholas
 - Randy Price
 - Anne Shaw



FNTC Mandate

- Protect integrity of First Nation tax system;
- Safeguard and enhance First Nation tax jurisdiction;
- Assist First Nation property taxation capacity development;
- Promote the understanding and use of First Nation property taxation; and
- Promote First Nation economic development.



FNTC Functions and Services

- Law Review and Approval
- By-law Review and Recommendation for Approval
- Policy and Legislative
- Education
- Registry and Publication of Laws
- Dispute Resolution



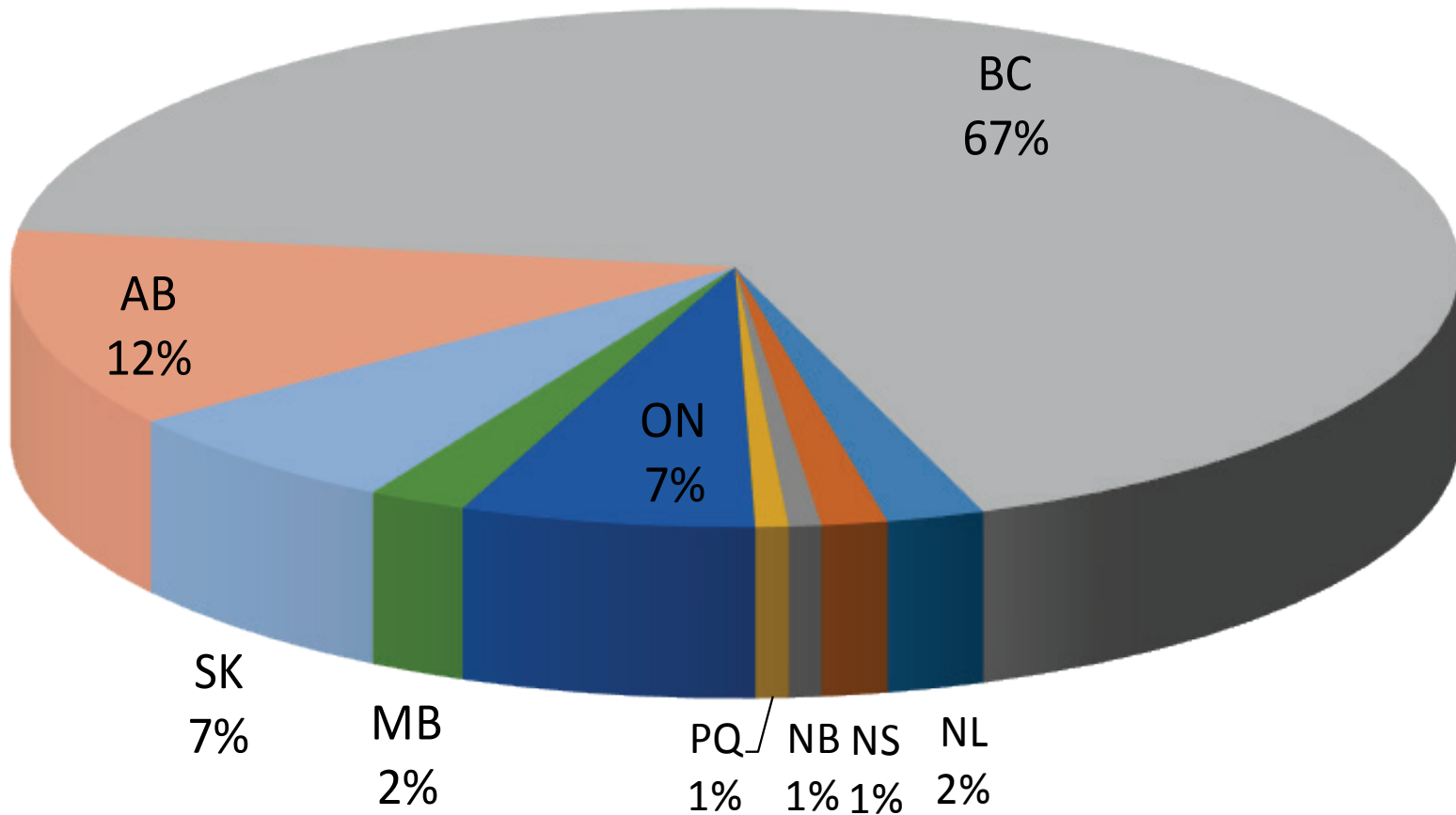
First Nation Property Tax – 2014

- 157 First Nations have property tax jurisdiction or are developing taxation through either FMA or Indian Act. This represents over 25% of 617 First Nations in Canada.
 - 124 First Nations on the FMA schedule
 - 73 First Nations are collecting tax under the FMA generating \$42.2M
 - 64 First Nations under section 83 generating \$33.1M
 - 31 First Nations in FMA law development to establish laws or replace existing section 83 by-laws.



FN Property Tax (FMA & s.83)

137 Taxing First Nations - By Province





Moving to the FMA

- 39 First Nations added to the FMA since September 2013
 - Added to FMA Oct 2013 (9) by region (BC=3; SK=1; MB=5)
 - Added to FMA Apr 2014 (16) by region (BC=7; SK=1; MB=4; ON=2; NB=1; NS=1)
 - Added to FMA Sep 2014 (14) by region (BC=8; SK=1, MB=2; ON=2; NS=1)
- 138 First Nations on the Schedule (40% increase since 2013, and over a 135% increase since September 2011).
- 5 First Nations waiting to be added.
- Not all Scheduled First Nations implementing taxation.



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
- Annual Service Tax 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, NB
 - new updated versions now available
- Annual Rate and Expenditure By-laws
- Business Licensing By-law
- Financial Administration By-law
- Telephone Companies Taxation By-law (Ontario)



FNTC and the FNTAA

FNTC maintains a good working relationship with FNTAA, emphasis in 3 areas:

- Education and Training
 - FNTAA participation through advisory committee
- Technical Assistance
 - Supporting new tax administrators
- FNTC standard and policy development
 - FNTAA policy input



Current Issues and Initiatives



Amending the FMA

- FNTC has maintained a list of needed changes to the FMA since the Act was passed in 2005.
- Suggestions and recommendations to improve the FMA have come from First Nations, tax administrators, taxpayers, assessors, and legal practitioners.
- In 2012, AANDC Minister's Report was tabled in Parliament with recommendations for changes to the FMA. Fulfilling the statutory requirement for a legislative review of the FMA.
- FNTC participated with other institutions and AANDC in the legislative review and has reported on this in the past.



Amending the FMA

- In 2013, AANDC engaged discussions on proposed amendments to the FMA.
- Discussions involve AANDC and the three First Nation fiscal institutions forming an FMA legislative working group.
- FNTC proposed recommendations aimed at achieving greater efficiencies and expanding FN revenue options.



FNTC Proposed FMA Amendments

- Proposed FNTC FMA amendments include:
 - Expanding local revenue definition to include fees, charges and grants in lieu, section 2(1)
 - Providing the power for First Nations to collect costs of enforcement, section 5(1)(a)
 - Reducing notification requirements and adding flexibility, s. 6
 - Reducing documentation requirements, s. 8
 - Clarifying annual law timing requirements, s. 10



FNTC Proposed FMA Amendments

- Proposed FNTC FMA amendments include:
 - Clarifying expenditure law requirements, s.13,14
 - Enhancing FNTC Standards-making power (notice and annual law timing requirements), s.35
 - Delegation to panels, s. 36
 - Clarifying taxation for joint reserves s.5 1(F)



Proposed FMA Amendments

Minister's Report proposed FMA amendments include:

- A complete repeal of s.83(1)(a) of the *Indian Act*
- Policy work required before this recommendation will be considered



FNTC Proposed FMA Amendments - Next Steps

- Work with federal government officials to develop draft legislative amendments.
- Seek Ministerial support and Cabinet support to introduce legislation.
- Parliamentary review.
- Legislative timetable difficult to predict with federal election slated for 2015.
- FNTAA support was important when the FMA was first developed and support for the FMA amendments will have a positive impact.
- Continue to advise the FNTAA on progress.



Assessment Services for First Nations

Overview of Regional Assessment Services

- Service New Brunswick - services available in 2014
- Property Valuation Services Corporation (NS)
- Municipal Property Assessment Corporation (ON)
- Manitoba Provincial Assessment - negotiations
- Saskatchewan Assessment Management Agency
- Alberta Linear Assessment
- BC Assessment



Taxation and Aboriginal Title

- SCC grants declaration of Aboriginal title to the Tsilhqot'in Nation.
- SCC concludes Aboriginal title confers possession and ownership rights including:
 - the right to decide how the land will be used;
 - the right to the economic benefits of the land; and
 - the right to pro-actively use and manage the land
- FNTC is responding to inquiries about how First Nation tax jurisdiction can be expanded beyond reserve boundaries, within aboriginal titled lands, using the framework of the FMA.



First Nations Gazette (FNG)

Supporting the Legal Voice of First Nations

- Publishes and provides free public access to First Nation laws, by-laws, and notices related to taxation and other matters.
- Established in 1997, in 2005 FNG was legislated under the FMA and is referenced in other Federal legislation.
- FNG is published by the FNTC with support from the Native Law Center. Fills the gap created when First Nation by-laws were omitted from the *Canada Gazette*.
- FNG became an online only service in 2014 (www.fng.ca) following the lead of other government gazettes.
- FNG's notification component can be used by First Nations (e.g., proposed laws, land designations, elections).
- Proposed Private Member's Bill (C-428) could expand FNG's role significantly (s.81 by-laws).



Expanding FN Revenue Jurisdiction and Financing Infrastructure

- Over the past 18 months, FNs have begun to expand their revenue jurisdiction and utilize FMA infrastructure financing tools.
 - Tzeachten First Nation Property Transfer Tax Law in June 2013.
 - Tsawout First Nation Borrowing Law in December 2013.
 - Tk'emlups te Sepwepemc DCC Law in January 2014.
- 7 First Nations working with FNTC in the development of PTT, DCC, and Borrowing Laws.



New, Amended, and Proposed Standards

- New Standards for 2014
 - Property Transfer Tax Law Standards
 - Development Cost Charges Law Standards
 - Saskatchewan First Nation DCC's
 - Borrowing Law Standards
 - Revised Notice Provisions
 - Assessment and Annual Rates Standards
 - Assessment for Agricultural Properties in Saskatchewan
- Standards in Development
 - Accommodation Tax
 - Mining Activity Tax



FMA Regulatory Initiatives

- FMA Borrowing for Treaty and Self-Governing First Nations
- Enabling FN Property Taxation and Assessment through Regulation
- FMA Access for Treaty and Self-Governing First Nations
 - Property tax jurisdiction using the FMA instead of provincial legislation
 - Education support



The Year Ahead

- FMA Legislative Amendments
- Taxation in Aboriginal Territory
- Discussions with BC concerning FN Accommodation Tax, and Mining Tax
- Research on property tax loss, ATR, TLE, and tax exemption agreements.



The Year Ahead

- Facilitating tax jurisdiction on jointly held reserves.
- Consulting with FNTAA and FN tax administrators on improving the laws/by-laws policy and procedures.
- Continue to work with the FMA institutions and communities to support First Nations borrowing and expanded revenue options.



First Nations Tax Commission

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Thank you

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