

MEMORANDUM OF UNDERSTANDING

BETWEEN:

The Minister of Indian Affairs and Northern Development (hereinafter referred to as the "Minister")

AND

The First Nations Tax Commission (hereinafter referred to as the "Commission")

WHEREAS First Nations led an initiative that resulted in 1988 in an amendment to the *Indian Act* under which First Nations can make real property taxation bylaws, subject to the approval of the Minister, so that First Nations' jurisdiction over real property taxation on reserve could be exercised;

WHEREAS the Indian Taxation Advisory Board was created to assist in the exercise of that jurisdiction by providing advice to the Minister on the approval of those bylaws and on policy issues related to the implementation of *Indian Act* bylaw-making powers;

WHEREAS the *First Nations Fiscal and Statistical Management Act* (hereinafter referred to as the "FSMA"), which received Royal Assent in 2005, expands First Nations real property taxation jurisdiction by establishing the Commission and by conferring powers on First Nations that opt into a regime established by the FSMA to pass local revenue laws, subject to the approval of the Commission;

WHEREAS it is anticipated that some First Nations will for a time nonetheless continue to exercise their jurisdiction over real property taxation under the *Indian Act* rather than under the FSMA, thus continuing to require Ministerial approval;

WHEREAS the Commission will inherit and continue to develop the extensive body of policy and standards developed by the Indian Taxation Advisory Board relating to real property taxation bylaws passed under the *Indian Act*;

WHEREAS under the FSMA, the purposes of the Commission include, amongst others, "to ensure the integrity of the system of first nations real property taxation and promote a common approach to first nations real property taxation nationwide"; and

WHEREAS the Minister accordingly wishes to receive advice and recommendations from the Commission with respect to approval of real property taxation bylaws that continue to be made by First Nations under the *Indian Act*, and the Commission wishes to provide such advice to the Minister;

NOW THEREFORE, the parties to this Memorandum of Understanding agree as follows:

I. First Nations Tax Commission

1. The Commission will:
 - 1.1. Advise and assist the Minister on policy issues relating to the implementation of bylaw-making powers under section 83 of the *Indian Act*, and on any related matter or policy put to it by the Minister;
 - 1.2. Make recommendations to the Minister relating to individual section 83 bylaws by examining all such section 83 bylaws in accordance with the following criteria:
 - conformity with enabling legislation
 - conformity with the *Charter of Rights*
 - comprehensiveness
 - compliance with principles of equity and natural justice
 - fairness
 - adequacy of notification and appeal procedures
 - absence of ministerial liability;
 - 1.3. Hear taxpayer concerns with respect to individual section 83 bylaws, and recommend to the First Nations and taxpayers the mechanisms or means for addressing those concerns;
 - 1.4. Provide education, information and assistance concerning First Nation taxation authority and section 83 bylaw-making powers;
 - 1.5. Examine opportunities to introduce regulations relating to matters set out in section 83 of the *Indian Act*;
 - 1.6. Make bylaws made under section 83 of the *Indian Act* accessible to the public through publication in the *First Nations Gazette* and otherwise;
 - 1.7. Advise the Minister in a timely fashion of any foreseeable conflicts between various levels of government concerning section 83 bylaws recommended for approval by the Commission; and
 - 1.8. Report annually to the Minister respecting its activities under this Memorandum of Understanding.

II. The Minister

2. The Minister will:

- 2.1 Consult with the Commission concerning matters of both practice and policy which affect issues of First Nation taxation relating to section 83 of the *Indian Act*;
- 2.2 Provide funding to the Commission for the purpose of supporting the Commission in providing advice and making recommendations relating to section 83 bylaws, subject to agreement between the parties on the terms of the funding;
- 2.3 Make reasonable efforts to meet with the Commission to discuss section 83 bylaw policy issues, as and when required, or when requested by the Commission;
- 2.4 Ensure that communication with the Commission on section 83 bylaw policy issues and section 83 bylaw approval is direct and timely; and
- 2.5 Consult with the Commission if, for any reason, the Minister is not satisfied with a recommendation made by the Commission in respect of a section 83 bylaw.

III. Amendments

- 3.0 This Memorandum of Understanding may be amended at any time with the consent of the parties.

IV. Duration

- 4.0 Unless terminated under section 5.0, this Memorandum of Understanding will remain in place for as long as section 83 of the *Indian Act* is in force.

V. Termination

5.0 This Memorandum of Understanding may be terminated as follows:

- (a) at the sole discretion of either party on one year's written notice, provided that the notice includes a written explanation for the termination; or
- (b) at any time with the concurrence of both parties.

VI.

6.0 If any part of this Memorandum of Understanding is inconsistent with any Act of Parliament or regulation, that part of this Memorandum of Understanding is of no effect.

Signed this 10 day of JULY, 2007.



Clarence T. Jules
Chief Commissioner
First Nations Tax Commission

Signed this 5th day of JULY, 2007.



The Honourable Jim Prentice, P.C., Q.C., M.P.
Minister of Indian Affairs and Northern Development