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# Lheidli T'enneh First Nation

## Fiscal Presentation

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# Goals And Approach

## **The Goals of the workshop are**

- To provide background and information
- To answer questions you have in respect to Fiscal Relations and taxation

## **Approach**

- Presentation and open discussion
- Questions are encouraged

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# Outline

- Overview
- Capital Transfer / Resource Revenue Sharing
- The Fiscal Relationship
- Programs and Services
- Funds
- Taxation

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# OVERVIEW

# Fiscal Components of the Final Agreement

Guiding principles  
are in the

**Final Agreement**



**Capital Transfer  
Chapter**

**RRS  
Chapter**

**Fiscal Relations  
Chapter**

**Taxation  
Chapter**

*Side Agreements  
Contains details  
Outside of Treaty*

*Fiscal Financing  
Agreement*

*Own Source Revenue  
Agreement*

*Tax Treatment Agmt*

*Property Tax Agmt*

*Other Tax Sharing  
Agreements*

# What Are The Fiscal Chapters?

- The Capital Transfer and Negotiation Loan Repayment Chapter
  - Sets out the Capital Transfer amount, time horizon and shape of the payments
  - Sets out the Loan amount as of effective day
  - Sets out a mechanism to subtract the loan from the capital transfer and remit the difference to Lheidli T'enneh
- The Resource Revenue Chapter
  - Sets out payments for resource revenue sharing
- The Fiscal Relations Chapter
  - Contains the commitment that the future financial negotiations will be conducted in accordance with the understanding that the parties have among them at the time of the treaty
- The Taxation Chapter
  - Sets out the Tax powers of the LTFN government

# What Are The Side Agreements?

- The Fiscal Financing Agreement (FFA)
  - Is an agreement of shorter duration, and sets out funding for your government, agreed upon programs and services, implementation, and the related terms and conditions
  - Is a more detailed document that is negotiated in accordance with the provisions of the Fiscal Chapter
- The Own Source Revenue Agreement (OSRA)
  - OSR is money each FN earns from economic activities
  - Determines your contribution to the funding of agreed upon programs and services
- The Tax Treatment Agreement
  - Sets out the tax rules for the LTFN government
- The Federal Tax Sharing Agreements
  - Income and sales taxes
- The Provincial Tax Sharing Agreements
  - Income, sales and property taxes



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# **CAPITAL TRANSFER AND NEGOTIATION LOAN REPAYMENT CHAPTER**

## **RESOURCE REVENUE SHARING CHAPTER**



# The Capital Transfer and Negotiation Loan Repayment Chapter

## Capital Transfer

- As part of the negotiations Canada and BC made a Land/Cash offer
- The Land portion is dealt with in a separate Lands Chapter
- The Capital Transfer is the Cash portion of the offer
- The Capital Transfer is intended to benefit the nation and not to pay for items such as programs and services, it is discretionary revenue.

## Negotiation Loan

- As part of the BCTC process, LTFN can borrow money and receives an annual grant through the BCTC
- For every \$100 of negotiation support funding allocated, \$80 is a loan, \$20 is a contribution from Canada and BC
- The loan portion of this must be repaid, it is generally interest free until effective date or the date the Nation withdraw from the Treaty process

# The Capital Transfer and Negotiation Loan Repayment Chapter

## What does this Chapter do?

- This Chapter sets out the Capital Transfer amount, interest rate, payment period, outstanding loan amount and schedule of net payments
- Loan payments are netted off the Capital Transfer amount
- Allows for prepayment of loan
- The Capital Transfer amount is \$13.2 Million \$2003 (\$16.1 million in \$2016)
- The outstanding Loan amount is \$6.34 Million (latest)
- The Chapter sets out 10 payments
- Sets out the interest rate for the payment period at 4.545%

# Resource Revenue Sharing Chapter

- Resource Revenues are revenues received by the crown (generally BC) charged for the extraction of resources from the Land (stumpage is a resource revenue, income tax is not)
- This Chapter outlines payments to the Lheidli T'enneh in regards to Resource Revenue sharing
- RRS Chapter contains provisions outlining the following
  - Initial payment date and period of payment (50 years) commencing on the first anniversary of the effective date
  - Payment formula: Canada and BC each pay 50% of \$595,373 (\$2016) and adjusted annually for inflation.
- Other Final Agreements
  - Maa-Nulth Final Agreement
    - The Maa Nulth Chapter sets out provisions determining payments to each of the five Maa-Nulth Nations.
    - Payments are to be made over a 24 year term
  - Nisga'a and Tsawwassen FA's do not contain RRS Chapter

# Capital Transfer & RRS Management

- The Capital Transfer received by Lheidli T'enneh will be placed in a Settlement Trust
- The Settlement Trust is designated as a tax free trust via the Taxation Chapter
- A Settlement Trust is a trust (account) that has conditions on how money can be invested and is guided by the rules set out in the Lheidli T'enneh Constitution
- The Settlement Trust is not intended to fund programs or services, separate funding is negotiated for those purposes
- RRS Management is guided by the rules set out in the Lheidli Constitution.

# Summary

Funding Type	Amount \$2016
Capital Transfer	\$16.1 million over 10 years less \$6.3 million in loan repayment
Resource Revenue Sharing	\$495,373/year for 50 years (indexed to inflation) NPV \$15.7 million

- The Capital Transfer is not intended to fund programs or services, separate funding is negotiated for those purposes
- Resource Revenue Sharing is not intended to fund programs or services, separate funding is negotiated for those purposes
- These are discretionary funds that only LTFN can decide how to treat (save, spend, etc.)

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# **THE FISCAL RELATIONSHIP**

**HOW PROGRAMS AND SERVICES WILL BE FUNDED**

# Fiscal Relations Chapter

- Provides a framework for negotiating the fiscal side agreements
- Two separate parts – Funding (FFA) and how FN revenues are to be taken into account (OSRA)
- Sets out a constitutionally protected commitment to negotiate and reach agreement to fund LTFN to provide programs and services
  - The FFA is the negotiated funding agreement that provides money for the Lheidli T'enneh government to deliver agreed upon programs and services
  - The Chapter sets out the factors to consider in negotiating future funding agreements, including the cost of providing P&S, the cost of the LTFN government, LTFN revenues and exemptions and a number of other factors that future negotiators need to take into account
- Through this Chapter and subsequent side agreement LTFN will have ongoing funding to provide programs and services to status members residing on TSL and some P&S to those residing off-TSL



# The Current Fiscal Relationship

## Numerous Funding Departments

- ❑ Indian Affairs (education, social, capital), DFO, Health Canada, etc..

## Funding Agreements

- ❑ Annual, Contribution agreements, Flexible transfer payments
- ❑ Combination of grants and re-imburement of actual costs of delivering programs to INAC standards

## Scope of Funding

- ❑ Status Indians and Indian families on-reserve
- ❑ Status Indians off-reserve (select programs)

## Role of Province

- ❑ Generally not a player
- ❑ May engage in contribution agreements
  - re-imburement of actual costs with administrative component
  - generally in social service program areas





# The New (FA) Fiscal Relationship

- New fiscal relationship envisioned to support a new government to government relationship
- Programs and services are funded by Canada, BC and LTFN
  - Through funding transfers (FFA) and OSR contributions
- Included in all modern day treaties and self-government agreements
- The fiscal agreement promotes aggregation of funding sources
  - Consolidation of INAC and other federal funding into multi-departmental and multi-year agreement
- LTFN is responsible for managing funding provided under the FFA - including surpluses or deficits
  - Surpluses could support unique programs and services
  - Deficits managed by LTFN - however, fiscal agreement contains provisions for exceptional circumstances

# Own Source Revenue (OSR)

- Own Source Revenue is money the Lheidli T'enneh government earns from economic activity, fees, charges, interest, tax, etc..
- A portion of those revenues is a factor in determining the funding transfer and is applied as a charge against the funding transfer
- Fiscal transfer = FFA amount minus the OSR amount
- OSR amount is the portion of those revenues that the parties agree that the Lheidli T'enneh will use to offset funding costs, this is set out in the own source revenue agreement.
- This OSR treatment was the major issue during negotiations and for the community
- However, Canada has developed a new OSR policy
- LTFN can access this new policy as a result of the Most favoured Nation Clause that is contained in the OSR agreement

# Own Source Revenue

The new policy exempts many of the sources of OSR that have been raised as issues by LTFN and others.

- In addition to the exemptions for tax room provided by the province, specific claims, funding transfers, sale of lands, compensation for losses, gifts and donations that are contained in the LTFN Fiscal Chapter we can now also get exemptions for:
  - Revenue from Impact Benefit Agreements
  - Income received on all Funds and bank accounts
  - All Dividends received by LTFN
  - Revenue from right of way access
- As well there is a new provision that does not allow OSR to be applied against the funding for Education, Health or Social Programs
- This new policy, that LTFN can assess, addresses all the issues that LTFN had with the previous policy and then some.

# Differences / Similarities

	<b>Current</b>	<b>Final Agreement</b>
<b>Funding Agreement</b>	Several, INAC ,DFO, HC, ESDC, BC,...	Consolidated FFA, BC
<b>Term</b>	Annual/multi (CFNFA)	5-10 years
<b>Arrangement</b>	mix of actual and grants	Block payment fully flexible move \$\$ around Increased risk
<b>Program Recipients</b>	Status Indians, Indian Families, Members off-reserve (PSE)	Status Indians, Indian Families Members off-reserve (PSE)
<b>OSR</b>	keep 100%	a very small portion offsets funding as determined in the OSR agreement
<b>Scope</b>	Band governance funding & INAC level of service	S-G, new authorities



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# PROGRAMS AND SERVICES



# The Fiscal Financing Agreement

## Side Agreement To The Fiscal Relations Chapter

- The Fiscal Financing Agreement (FFA) sets out negotiated outcomes:
  - Funding to support the provision of agreed-upon programs and services; governance; implementation
  - Time limited funds (fish, capacity & training, implementation)
  - Terms and conditions
  - Accountability/reporting provisions
- The FFA:
  - Is not part of treaty
  - Is a multi-year (5 with 2 year renewal) agreement that is to be re-negotiated
  - Consolidates funding from various federal departments
  - Program Areas covered include:
    - Health (community health programs)
    - Social programs (CFS, income assistance, family violence, etc. )
    - Education (k-12, PSE support, ancillary services, transportation, etc.)
    - Local services (government, land and resource management, implementation, etc.)
    - Capital (existing assets, new capital, housing)
    - DFO (AFS)

# The Fiscal Financing Agreement

- The FFA replaces the current funding arrangements with Canada
- The main impact will be noticed by Lheidli Government employees and program managers as they will have simplified reporting, better planning ability and more direct influence and “say” in budget preparation as well as considerably more funding
- The impact upon members will be positive as we are talking about a different funding agreement but very similar programs and coverage
- However, there is substantially more funding available
  - On reserve members will see no decrease in programs and likely will see improvements in delivery as planning and budget certainty improves
  - Off reserve members may see an improvement in the programs and services they receive from the LT government
- The additional funding should raise program and service levels across the board



# Programs and Services

The Final Agreement states:

- LTFN citizens continue to be entitled to all the rights and benefits of other Canadian citizens
- The Final Agreement does not affect the eligibility of LTFN citizens for federal and provincial programs or services for aboriginal people unless LTFN has assumed responsibility for delivery of those programs or services
- The FFA is the mechanism through which LTFN assumes responsibility for programs and service delivery.
- If a program or service is not in the FFA then LTFN citizens remain eligible to get that program or service from Canada or BC as guaranteed by the Chapter provision above (e.g., NIHB will be provided directly by Canada)
- LTFN assumes responsibility for the delivery of certain Programs and services through the FFA as follows:



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# FFA: Program Responsibilities

## HEALTH

- Eligibility: Indians ordinarily resident on Lheidli T'enneh Lands:
  - immunization, communicable disease control programs;
  - community health promotion and prevention programs;
  - home and community care program; and
  - environmental health and drinking water safety program.

# FFA: Program Responsibilities

## SOCIAL DEVELOPMENT

- Eligibility: Indians and Indian Families ordinarily resident on Lheidli T'enneh Lands
  - income assistance and services, including basic needs, shelter, guardian financial assistance and special needs
  - training, education and support initiatives to reduce reliance on income assistance
  - local community programs, including adult in-home care, family violence, and children's programs
- Eligibility: for non-Indian members of Indian Families ordinarily resident on Lheidli T'enneh Lands
  - non-insured health benefits as under the Social Assistance program

# FFA: Program Responsibilities

## EDUCATION

- Eligibility: an Indian who is ordinarily resident on Lheidli T'enneh Lands
  - instructional services (Kindergarten to Grade 12) (via a LEA);
  - instructional support services including:
    - ancillary services
    - student allowances
    - guidance and counseling
    - comprehensive instructional support services
  - transportation;
- Eligibility: Lheidli T'enneh Indians, regardless of where they ordinarily reside in Canada
  - financial support to attend accredited post secondary education or training institutions.



# FFA: Program Responsibilities

## GOVERNMENT FUNCTIONS AND SERVICES

- executive and legislative functions, administration, management and operation of its Lheidli T'enneh Government including:
  - participation on the Implementation Committee;
  - maintenance of a public registry of the Lheidli T'enneh Constitution and any Lheidli T'enneh Law, and other record keeping
  - conduct of elections and referenda for the Lheidli T'enneh Government;
  - Enrollment and maintenance of an Enrolment Register
  - raising of revenue
  - financial management of Lheidli T'enneh Government
  - program and financial accountability in accordance with the Lheidli T'enneh Constitution
- land and environmental management including zoning, development, planning and land use planning in respect of former Reserve lands
- economic development services
- enforcement of Lheidli T'enneh Laws



# FFA: Program Responsibilities

## FISHERIES

- Lheidli T'enneh will:
  - participate on the Joint Fisheries Committee
  - prepare Annual Fishing Plans for all harvesting under the Lheidli T'enneh Fishing Right and for Harvest Agreement fisheries
  - manage those aspects of harvesting under the Lheidli T'enneh Fishing Right and Harvest Agreement fisheries that are internal to Lheidli T'enneh
  - document individuals who harvest under the Lheidli T'enneh Fishing Right

## PHYSICAL WORKS PROGRAMS AND SERVICES

- Lheidli T'enneh will be responsible for the major maintenance and replacement of the Agreed Upon Assets listed in Schedule C



# FFA: Programs not Included

- A number of programs and services are not included in the FFA, this comes about for a number of reasons:
  - The program is high cost, high risk
  - The program is cheaper to be delivered by another government
  - The program is not offered for inclusion
- Examples are:
  - Non-Insured health benefits
  - Institutional care for elders
  - Institutional care for the mentally handicapped
  - Most programs provided to members by BC are not included in the FFA
    - BC will continue to provide them as they do now

# Current Funding vs FFA

	Latest Funding 2016\$	FFA 2016\$	Increase \$	Increase %
<b>Government and Treaty support</b> Band support, Indian registry	241,324	589,327	348,003	144%
<b>Community Development Officer</b>	0	100,000	100,000	
<b>Social Services</b> Basic needs, TESI, NCB, in home care	213,132	468,014	254,882	120%
<b>Education</b> k-12, PSE	195,430	451,904	256,474	131%
<b>Capital</b> MM&R, O&M	79,333	175,609	96,276	121%
<b>Land &amp; Resource Management</b>	204,536	100,777	-103,759	-51%
<b>Health</b>	172,746	220,373	47,627	28%
<b>Fish</b>	124,500	239,971	115,471	93%
<b>Total Ongoing Funding</b>	<b>1,231,002</b>	<b>2,345,976</b>	<b>1,114,974</b>	<b>91%</b>



# Future Funding

- The FFA has a 5 year term with an automatic 2 year extension to allow for renewal negotiations.
- During the 5-7 years funding increases annually by an adjuster that is to reflect increases in population and price (inflation).
- The adjuster contained in the FFA is actual inflation plus 2.7% to reflect population growth
  - For example if inflation is 1.3% then the funding amount will increase by  $(1.3+2.7) = 4\%$
  - This calculation is done every year.
- Future funding agreements (FFA's) will also contain negotiated adjusters by which to adjust annual funding for changes in price and population.



# Implications for Citizens

- In terms of general programs you are entitled to as Status Indians (e.g., health care, education); nothing changes
- In terms of funding for programs delivered by your government – all programs continue to be funded but the underlying agreement changes. So, in terms of program you access – nothing changes

In respect to programs delivered by your government on reserve

- Your government will have a lot more ongoing funding to provide programs to meet community needs
- Your government will have more flexibility to tailor programs to meet community needs
- You will not be operating under the strict Indian Act regulations

In respect to off reserve programs delivery

- Your government may choose to expand delivery of certain programs to off reserve members, however for many provincial programs (e.g., k-12 and IA) you will continue to access the provincial system.



# Implications for LTFN Government

- Funding is more secure
  - Multi-year agreements allow for more certainty and better planning
- Less INAC oversight
  - No reviews or recoveries
- More fiscal responsibility
  - Keep surplus funds, responsible for deficits
- Less reporting
  - Reporting is decreased and greatly simplified
- Fewer under-funded responsibilities
  - Ongoing funding for major-maintenance and replacement
- Increased funding
  - Over \$1.1 million per year additional for programs and services (almost twice what LTFN gets today)
  - with annual increases for population growth and inflation (which is not available under the Indian Act)



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# Points to Remember

- The Fiscal Chapter contains a commitment to negotiate funding to allow LTFN to provide programs and services through the FFA
- This commitment is constitutionally protected
- IF Canada does not fund a program or if LT does not include it in an FFA then LTFN does not need to provide it and it will be provided by Canada or BC
- The Capital Transfer or RRS is not intended to be used to fund programs as all Programs and Services are funded by the FFA
- Funding negotiated under the Final Agreement (in the FFA) is almost twice what LTFN received today

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# FUNDS

# Funds Overview

Funds	\$ 2016
Implementation	8,962,405
Fish	3,759,054
Fishery Equipment	344,580
Capacity Building and Transition	1,754,225
Economic Development	1,673,592
<b>TOTAL</b>	<b>\$16,493,856</b>

- These funds are considered to be one-time funds, so Canada/BC do not have a obligation to negotiate and reach agreement on any further funding in these areas.
- Canada and BC have moved away from providing these types of funds.

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# Fisheries Fund

- \$ 3,759,054 (\$2016)
  - To be used to support the funding of the following ongoing fisheries management programs and activities:
    - Conservation and protection of Fish stocks in the Lheidli T'enneh Fish Area;
    - Facilitation of assessment and sustainable management of Fish stocks in the Lheidli T'enneh Fish Area; and
    - Promotion of Lheidli T'enneh participation in the stewardship of Fish in the Lheidli T'enneh Fish Area.
- \$344,580 (\$2016)
  - To be used for the purchase or lease of a hydro-acoustic unit or other fisheries stock assessment equipment as agreed to in the Joint Fisheries Committee.

# Implementation Fund (time limited)

- Total of \$8,962,405 with \$1,596,159 for time limited activities listed below
  - time limited training
  - development of information systems
  - development of strategic plan; a capital asset management plan; a comprehensive community plan; and an environmental management plan;
  - transition activities related to land and environmental management on former reserve lands:
    - zoning; development
    - land use planning in respect of former reserve lands
    - land transaction management; compliance
    - development of policies and procedures for the management, protection and use of the environment
    - consultation on land use planning and environmental policies and regulations
  - development of an emergency preparedness and response plan.



# Implementation Fund (ongoing activities)

- \$7,366,245 to undertake ongoing implementation activities to support the implementation of the Lheidli T'enneh Final Agreement:
  - training
  - legal advice including in respect of international legal obligations
  - insurance (property, liability, crime, directors and officers)
  - human resource management
  - maintenance of information systems
  - maintenance activities related to planning
  - migratory birds management:
    - designation of species;
    - the distribution of Lheidli T'enneh entitlements
    - consultation on migratory birds; and
    - fieldwork;



# Implementation Fund (ongoing activities)

- the provision of the following government services:
  - issuance of permits and licenses for lands and resource activities over which the Lheidli T'enneh Government has jurisdiction and
  - fire protection;
  - appointment of officers for the enforcement of Lheidli T'enneh Laws in areas such as zoning, land use, traffic and transportation; and
  - implementation and annual updating of an emergency preparedness and response plan; and
- the costs of facilities for delivering executive, legislative and administrative functions of the Lheidli T'enneh Government.

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# Capacity Building and Transition Fund

- \$1,754,225 (\$2016)
- To be used to undertake the following ongoing and time limited capacity building, transition activities and requirements to support the implementation of the Lheidli T'enneh Final Agreement:
  - Transition to enhanced governance functions as a result of entering into the Lheidli T'enneh Final Agreement
  - Capacity building and training to assist Lheidli T'enneh to successfully manage its affairs

# Economic Development Fund

- \$1,673,592 (\$2016)
- To be used to undertake activities to support economic development including:
  - Development of lands and resources to support the social and economic well being of Lheidli T'enneh
  - Development of long-term strategies to support economic development and greater participation in the provincial economy
  - Creation and expansion of Lheidli T'enneh businesses
  - Establishment of economic development organizations
  - Preparation of business plans and sector development strategies
  - Training and skill development of Lheidli T'enneh Citizens.

# Public Works

Funding to construction for:

- Sewage systems – North and South Shelley
- Flood and erosion riverbank protection
- Drinking water improvements north and south Shelly
- South Shelley road
- North Shelley subdivision
- Shelley road IR #2
- Fire Protection
- Residential Sprinklers
- Housing renovations

Value of commitment \$2,000,000 - \$6,000,000

- Continued access to INAC Capital project funding for new capital
- Commitment to add major maintenance and replacement funding for new capital construction to ongoing FFA funding



# Summary

Funding Type	Amount \$2016
Capital Transfer	\$16.1 million over 10 years
Resource Revenue Sharing	\$495,373/year for 50 years (indexed to inflation) NPV \$15.7 million
Ongoing funding for programs and services, and incremental implementation and governance activities: Health Social Development Education Land and resource management Fisheries management Self-Government	\$2.3 million/year
One-time funding to support: Ongoing costs of treaty management and time-limited transition costs of land and resource management. Establishment of a capacity-building and transition fund. Establishment of an economic development fund Establishment of a fisheries fund to support ongoing costs of the general management of the Lheidli T'enneh fishery.	\$16.5 million
Capital Construction Commitment	\$3-7 million



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# Benefits:

## Fiscal Chapter

- It exists
- There is a commitment to negotiate and reach agreement on Funding (this is beyond anything in the Indian Act)

## Fiscal Financing Agreement

- Multi year term to facilitate planning and to keep programs that have be canceled (TESI)
- INAC not looking over ones shoulder (compliance reviews)
- Block funding, can allocate dollars where needed and save surpluses
- Adjusters – not subject to the whims of Canada's budget increases/decreases

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# TAXATION

# Taxation

- Tax Chapter requires one side agreement: the Tax Treatment Agreement (TTA) and allows for a number of side agreements to cover income tax, transaction tax and property tax co-ordination
- The Tax Treatment Agreement sets out how the First Nation will be treated for taxation purposes
- A Property Tax co-ordination agreement was also negotiated

The Taxation Chapter sets out:

- The taxation powers of the LTFN government
- Provisions for agreements outside the treaty about:
  - taxing non-LTFN Citizens and co-ordination with federal and provincial taxes
  - how the LTFN government will be taxed
- Tax exemptions of the LTFN government (for TSL and capital)
- Phase-out of the tax exemption for LTFN Status Indians



# Taxation Chapter

- Currently, status Indians on reserve are exempt from paying taxes (including sales and income taxes) under Section 87 of the *Indian Act*.
  - Through the treaty, these tax exemption will be phased out; (8 & 12 years)
- The Final Agreement makes two changes that impact the taxability of LTFN members
  - After effective day there is no longer a reserve, all the Land is TSL
  - The Tax Chapter states that S.87 of the *Indian Act* will have no application to a LTFN citizen: (after a phase-out period)
- Therefore once the phase-out period is over LTFN citizens will be subject to tax regardless of where they live. (TSL, other reserve, off reserve)
- The phase out period is 8 years for sales taxes and 12 years for all other taxes
- During the phase-out period the S.87 continues but only on reserves and former LTFN reserve lands
  - However, if a member does not enrol and become a citizen then they do not lose the exemption – although they would still have to reside on a reserve to benefit from it



# Tax Treatment Agreement (TTA)

- The TTA set out how the LT Government is to be taxed
- The First Nation government, for income tax purposes, will be deemed to be “a public body performing a function of government in Canada”. This means that the First Nation government will have the same income tax exemption as municipalities
  - To a large extent, this codifies the existing practice for Indian bands, which generally can qualify as “public bodies performing a function of government in Canada”
- **Income Tax:** Confirms the eligibility of corporations and subsidiaries owned by the First Nation to qualify for income-tax exempt treatment under paragraph 149(1)(d.5) of the Income Tax Act, subject to the same geographic limits and ownership criteria as apply to corporations owned by other governments in Canada
- **Gifts:** Confirms the ability of the First Nation to receive “charitable” gifts for which the donor can claim a tax credit (or tax deduction, in the case of a corporation)
- The TTA contains other provisions but generally it provides tax relief



# Sales Tax

- Sales tax is a tax applied to retail sales of goods and services
- The section 87 exemption has a requirement that needs to be fulfilled in order to take advantage of the exemption:
  - must make purchase or delivery of goods on a reserve

Impact on Members:

- Loss of section 87 on Sales Tax may impact more members than on income tax but to a lesser extent as generally most purchases are made off reserve.

Implication for LTFN government revenues:

- Tax co-ordination agreements would transfer 100% of all federal GST collected from all residents residing on TSL **whether the sale was made on or off TSL**
- Tax co-ordination agreements would transfer 50% of all provincial PST collected from citizens residing on TSL **whether the sale was made on or off TSL**
- A net benefit to the community as revenue received exceeds new expenditures on GST and PST (benefit increases with number of non-status residents)



# Personal Income Tax

Personal Income tax is tax that individuals pay on income they earn

- Canadian federal income tax is calculated separately from provincial/territorial income tax. However, both are calculated on the same tax return.
- The tax system is progressive meaning that the higher the amount of taxable income the higher the tax rate
- The process
  - determine income from employment and investment
  - determine gross tax payable (applying tax rates to total income)
  - calculate tax credits, deductions and refundable benefits and subtract from the gross tax payable
- Not all income is taxed
  - gifts and inheritances
  - capital gain on the sale of a taxpayer's principal residence
  - winnings from betting or gambling or lottery
  - various tax benefits and credits (the Goods and Services Tax credit, BC Sales Tax credit, the Canada Child Tax Benefit, etc.)



# Personal Income Tax

Total Income	Fed. Tax	Prov. Tax	Refundable Benefits	Net Tax Payable
<b>Single Individual</b>				
10,000	0	0	1,742	-1,742
20,000	1,035	41	752	325
40,000	3,832	1,400	137	5,094
60,000	7,951	2,909	0	10,860
<b>One-Earner Family of Four</b>				
10,000	0	0	12,731	-12,731
20,000	0	0	12,905	-12,905
40,000	1,911	967	7,230	-4,352
60,000	6,030	2,476	4,618	3,888



# Personal Income Tax

## Impact on Members:

- For a number of members there will be no impact as they do not qualify for section 87 exemption
- The section 87 exemption has a number of requirements that need to be fulfilled in order to take advantage of the exemption for employment income:
  - over 90% of duties of employment occur on a reserve (employee may live off-reserve)
  - employer and employee reside on reserve (activities may be off-reserve)
  - >50% of duties occur on reserve and either employer or employee reside on reserve
  - the employer is an Indian band or agency on reserve and the duties are non commercial.
- Generally the main impact of income tax is upon Band employees as most other employed members work off reserve and already pay tax
  - increased revenue to the LTFN resulting from the tax sharing agreements could be used to help offset this impact.

# Property Tax

- The assessment and taxation of real estate in British Columbia has existed since before 1860
- Property tax is a tax levied by the government upon property owners on the value of property (building and land) they own
- Property assessment and taxation in British Columbia is a two-step process involving BC Assessment and the various tax authorities
  - BC Assessment determines the classification, value and exemption status of property
  - Government will then apply their tax rates to assessments
    - $\text{Property tax} = \text{value of property} * \text{tax rate}$
- Property tax revenues in municipalities are used to provide local services such as: transportation, health services, recreational facilities, police and fire protection, water, sewer systems and garbage disposal
- Property Tax for LTFN is discretionary revenue as the FFA will provide funding for local services

# Property Tax

## *Impact on members*

- When system is mature, all residents on TSL pay property tax, this could impose a sudden hardship on low income homeowners
- Possible solutions:
  - put restrictive covenants on land transfers to reduce value of homes
  - reduce the general tax rate
  - property value may be limited to the physical structure depending on how Land will be treated under your Land Law
  - offer a grant program that rebates a portion of the tax to certain classes of tax payers e.g., elders, low income households, etc.
    - must be offered to all taxpayers, regardless of citizenship,
  - reduce or waive property taxes for low income tax payers
  - Redesign the HOG: increase the grant or use lower minimum taxes
- Other options exist for low income renters (Social Housing Classification) as social housing is tax exempt



# Property Tax - example

- Residential property tax estimates based on Property Assessments completed by BC Assessment Authority and current Tax Rate for SFN.
- Home owners grant (\$770, min tax \$350) and seniors grant (\$1,045, min tax \$100) are existing grants in effect
- Following table shows average results for fee simple property and property with a restrictive covenant limiting sales to members.

	Assessed Value	Property Tax before Grants	Tax after applying Home Owners Grant	Tax after applying "Seniors" Grant
fee simple	231,633	1,685	<b>915</b>	<b>640</b>
restricted sales covenant	135,317	984	<b>350</b>	<b>100</b>

- If one also lowers the minimum tax rates then property tax is virtually eliminated.

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# Taxation Q&A's

I often get asked tax questions – here are some of the most common

## **Are there any benefits to the tax chapter?**

- The tax agreements provide LTFN with a number of significant benefits
  - Providing LTFN with tax revenues from status and non status residents on Lands
  - Expanding the tax base to include sales tax spent off Lands (TSL)
  - Enabling LTFN to raise revenues as other governments do, to help fund LTFN as a self-governing entity

# General Tax Comments

## Taxation is a right and we are taking it away

- Taxation is not a right; it is an interpretation of Section 87 of the Indian Act which states, in part:
  - *Notwithstanding any other Act of Parliament or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,*
    - *the interest of an Indian or a band in reserve lands or surrendered lands; and*
    - *the personal property of an Indian or a band situated on a reserve.*
- This was written before there was income and sales taxes and has been interpreted to apply to income and sales taxes on reserves.
- Over the years, Revenue Canada has been making it more difficult to obtain Section 87 exemptions by tightening up the requirements and by doing tax audits. It is expected that these rules will be tightened up further over time.

# General Tax Comments

The elders and poor will be impacted the most and this is wrong.

- The tax system is progressive meaning that poor people pay less (or in many cases receive funding) while richer people pay more. There are also many exemptions and credits for elders which generally ensure that they pay no tax.
- Generally low income individuals will pay no property tax or income tax and will receive sales tax benefits. Tax agreements will provide the FN government with substantial ongoing tax revenues that can be used to improve the programs and services provided to low income individuals and the elders and should result in a better life for these individuals.

# General Tax Questions

## **Under what authority are we exempt from paying taxes? And how can that be changed?**

- Section 87 of the Indian Act exempts status Indian property on reserves. It is federal legislation which Parliament could modify at any time

## **Why can't we stay tax free?**

- Phasing out of the tax exemption is a fundamental position of Canada and BC in treaty negotiations
- The tax exemption is part of the Indian Act regime which the treaty will replace.

## **When will the tax exemption be phased out for LTFN citizens?**

- Currently, Status Indians on reserve are exempt from paying taxes (including sales and income taxes) under section 87 of the *Indian Act*. Through the treaty, these tax exemption will be phased out
- In eight years for sales taxes, and in twelve years for other taxes



# General Tax Questions

## What taxation powers will the LTFN government have?

- The LTFN government will have direct taxation powers over LTFN citizens on LTFN Lands (TSL).
  - taxation of other residents would be provided through side agreements.

## What happens with the tax money we pay?

- LTFN will enter into a side agreement with Canada and BC so that virtually all of the GST and personal income tax paid to Canada from all residents on TSL and 50% of the provincial sales tax and personal income tax paid to BC from citizens who reside on TSL will be transferred from Canada and BC to the LTFN government

## What if I don't pay my taxes?

- Depending on the type of tax, actions to collect these taxes may be taken by or on behalf of LTFN. Enforcement and penalty provisions under the *Income Tax Act* or *LTFN Property Tax Act* could apply

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# Property Tax

## What is property tax and what is the money usually spent on?

- Property tax is a tax levied by the government upon property owners on the value of property (house and land) they own
- Tax revenues in Municipalities are used to provide transportation, health services, recreational facilities, police and fire protection, water, sewer systems and garbage disposal

## Who pays property tax?

- Property tax is paid by owners of property.
- Unless the owner is tax exempt and then the renter pays it

## Who does not pay property tax?

- First Nation government
- Renters (if they rent from a private individual or land holder)
- Low income renters of band homes (if home qualifies as social housing)

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# Summary

- 8 years after effective date, sales tax exemption ends for LTFN residents and citizens
- 12 years after effective date, income tax and property tax exemption ends for LTFN residents and citizens
- LTFN will levy and collect property tax from all residents on TSL
- Numerous options are available and will be explored to minimize the impact of property tax to citizens
- LTFN, separately with Canada and BC will enter into tax sharing agreements whereby Canada and BC will collect income and sales tax and remit all or a portion back to the LTFN government



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# Further Questions?

If you have any further questions or points that you would like clarified or discussed please send me an email at

[bstipdonk@gmail.com](mailto:bstipdonk@gmail.com)

And I will respond to you ASAP