



**Written Submission for the
Pre-Budget Consultations in
Advance of the 2019 Budget**

July 19, 2018



First Nations Tax Commission

Commission de la fiscalité des premières nations



Recommendation 1: The federal government enable new *First Nations Fiscal Management Act* (FMA) fiscal powers.

Recommendation 2: The federal government support the establishment of a First Nations Infrastructure Institution.

Recommendation 3: The federal government work with the FNTC, other FMA institutions and interested First Nations to make the necessary FMA amendments to associate new First Nation fiscal powers with new responsibilities.

Recommendation 4: The expanded FMA should be made available to First Nations entering Treaty and self-government negotiations.

Recommendation 5: The expanded FMA should form the framework for a revenue-based fiscal relationship option available to interested First Nations.

Recommendation 6: The federal government should develop the legislative framework to support an Indigenous Blockchain Land Registry system for First Nations.



Introduction:

The six recommendations made by the FNTC addresses two serious impediments to improving Canadian competitiveness: (1) First Nations are the fastest growing component of the work force and one of its most underemployed. (2) The lack of clarity over First Nation rights off reserve is making it difficult to understand and navigate approval processes for major resource projects.

The federal government can address both issues by building upon the demonstrated success of the FMA. First Nations using the FMA have been able to attract investment and improve property values, opportunities, services and infrastructure. They have been able to put formerly underemployed people and unutilized land to work. The key to this success was putting fiscal and decision-making power into First Nation hands, thereby creating a stake in the success of their regions which has created an incentive to clarify approval requirements.

Despite this demonstrated success and support from First Nations, current federal policy is that First Nations entering into Treaty or self-government arrangements would have their FMA tax powers revert to provincial governments, and they would no longer have the FMA's institutional support available to them. This would be a major mistake.

New FMA Fiscal Powers

Proposed new FMA fiscal powers are listed below. These tax options will allow more First Nations to use the FMA and also amplify its benefits for current users. The FMA framework will help ensure the evolution of First Nation government is consistent with the principles governing existing intergovernmental arrangements in Canada.

1. **Cannabis Tax.** A cannabis tax jurisdiction option should be made available under the FMA when recreational cannabis becomes legal. This means First Nations would obtain fiscal powers associated with cannabis excise tax, FNGST and licensing, which would require amendments to the Cannabis Act, FMA, Excise Act, 2001, and FNGST Act. Cannabis tax revenues will help address infrastructure needs and ensure that no grey market develops on reserves.
2. **First Nations Goods and Service Tax.** First Nations should be able to make laws to implement FNGST revenues “local revenues” under the FMA, while leaving the existing FNGST administrative framework in place. The key elements of the proposal are as follows:



- a. Amend the FMA to enable First Nations to make an FNGST law that is consistent with specified provisions of the FNGST Act, and to provide that FNGST revenues collected under the authority of that law are local revenues under the FMA.
- b. As required, amend the FNGST Act to specifically reference the FMA in section 12(1) of the FNGST Act.
- c. Modify the FNGST administration agreement as necessary for participating First Nations, to reflect the FMA law-making authority and the payment of the FNGST revenues into the local revenue account.
- d. Eliminate the revenue sharing elements of the FNGST as part of a revenue-based fiscal relationship option.

Each FMA First Nation will have the option to enact its FNGST law under either the FMA law-making power, or under section 4 of the FNGST Act.

3. **Four Product First Nations Sales Tax.** The moratorium on the previously existing First Nation Tax (FNT) should be lifted and expanded so that First Nations have the option to implement a four-product sales tax that occupies the GST room for fuel, alcohol, cannabis and tobacco (FACT). The revisions to the previous FNT enabling legislation should be straightforward. They could also be linked to other First Nation federal tax proposals related to cannabis, tobacco and fuel excise taxes and, where coordinated, the provincial tobacco, alcohol, fuel and cannabis taxes.
4. **Carbon Tax** – Enable an FMA First Nation carbon tax to be coordinated with provincial and federal systems.
5. **Tobacco Tax** – Ensure that interested First Nations can collect the equivalent provincial tobacco tax in coordination with the FMA and interested provincial governments.
6. **Aboriginal Resource Tax.** Create an FMA legal and administrative framework so First Nations can receive revenues from major resource projects taking place on their traditional territories. This would replace the present approach whereby each new project entails financial negotiations with all affected First Nations. That approach is unduly opaque, time consuming and administratively costly. The bottom line is that it is harming Canada's international reputation for investment and this is clearly harming competitiveness. A standardized and pre-specified approach will greatly simplify consent negotiations and create a better environment for resolving other issues.



Infrastructure Institution

The FNTC is advocating for a First Nations Infrastructure Institution (FNII) because it will ensure that First Nations get maximum value from their investments in infrastructure. It will help First Nations plan, finance, build, operate, maintain, repair and ultimately replace infrastructure by providing the necessary expertise and support that might otherwise be beyond their means. It will help coordinate community and economic development infrastructure needs so that self-sustaining infrastructure systems can be developed. As a First Nations institution, it will better support the use of local knowledge. FNII will ensure maximum value from investments and prolong the life of infrastructure. The FNTC has worked with interested First Nations and made significant progress on this proposal (see fnii.ca).

New Responsibilities Under the FMA

Revenues generated by the new tax options will, initially, finance infrastructure. However, in time, the revenue potential of some of these tax streams will likely be greatly increased and funds will be available for other uses. The federal government should therefore support First Nations eventually using their new tax revenues to assume full responsibility over some programs and jurisdictions under the FMA. This would be in lieu of other approaches to fiscally accounting for own-source revenue capacity. The federal government should work with the FMA institutions and interested First Nations to establish new supportive institutions, such as FNII. These institutions will help First Nations develop the capacity for new responsibilities, support economies of scale, and access to scarce expertise.

A key to the success of the FMA was that it allowed First Nations to retain revenues developed by its tax options and to expend them without the need of federal approval, priority setting, conditions or oversight. Accordingly, First Nations were incentivized to develop their economy and also free to set priorities, design services and respond to changing opportunities and circumstances in support of that goal.

FMA Available Under Treaty and Self-Government Arrangements

The federal government should ensure that First Nations entering into Treaty and self-government arrangements are still able to use the FMA. Many First Nations have used the FMA to develop and operate their administrations and economies, access capital and expertise, and help resolve interjurisdictional issues. They want to continue to rely upon the FMA under Treaty and self-government arrangements.



The present policy eliminates FMA authorities and implements provincial governments authority, who may then choose to delegate certain powers. This is viewed by many as a reduction in authority, and a major step backward, by First Nations. It also means a First Nation needs to incur costs in replacing the FMA support.

The current policy is wrong. It creates a strong disincentive to self-government, undermines the ability of First Nations to benefit from self-government¹, and it is not consistent with the federal government's position that it wishes to promote self-determination.

Revenue Based Fiscal Relationship

The federal government should build on the model of the FMA to provide First Nations with a larger set of unassailable powers and revenue authorities that cannot be unilaterally overturned. This would create a revenue based fiscal relationship that would serve as the core of the First Nation fiscal relationship.

The FMA creates a set of First Nation powers that are supported by First Nation's own revenues, rather than federal transfers. FMA institutions provided capacity development, ongoing support, third party verification of financials, representation in legal and political forums, improved access to capital, and a regulatory structure that has facilitated participating First Nations integration into the economy and inter-governmental arrangements. The FMA institutional framework greatly extends the scope of self-government powers that are possible.

Putting fiscal authority directly into First Nation hands has led to economic development, improved cooperation at the local and regional level, better outcomes, and it has been supported by many First Nations. It should be developed on four dimensions: (1) The new fiscal powers identified above should be made available. (2) Institutional support should be expanded to accommodate these new revenues. (3) The FMA should be made available to First Nations under modern Treaties and self-government arrangements. (4) The FMA legislation should be amended to support the incremental incorporation of additional service responsibilities within the FMA framework. An incremental process will provide First Nations with the time to identify responsibilities over which they can and wish to assume full responsibility; and, an opportunity to determine the true revenue potential of the new tax options.

¹ For example, First Nations under modern Treaty report that they have had their access to capital considerably curtailed by an inability to access FMA borrowing.



Indigenous Blockchain Land Registry System

The Indian Land Registry System is the least effective registry system in Canada. It is the most inefficient, least reliable and secure and has the longest processing times and highest costs. It contributes to less economic development, more legal and other disputes, greater administrative costs, less sustainable infrastructure, longer additions to reserves, and more protracted wills and estate settlements on First Nation lands.

First Nations need a modern land registry system to reduce the high transaction costs and poor access to capital on their lands. They need a new land registry that will reduce lengthy searches by potential investors and process relatively simple transactions, such as leasing and mortgages.

Opportunities are emerging to develop improved land registry systems using blockchain, artificial intelligence and smart contract technology. This new technology can support greater transparency, more certainty and reliability, faster transactions, lower costs, better investor and lender protection, easier initial registrations than current land registry systems. This new technology provides an opportunity for interested First Nations to transition from the current Indian Land Registry system.

The federal government should support this transition in three ways. First, it needs to pass legislation that allows for the initial registration of First Nation interests in new land registries. Second, it needs to support interested First Nations that want to establish the institutional framework to guarantee title in this new registry. Finally, it needs to support interested First Nations who want to transition their current interests to improved land registry systems.