First Nations Tax Commission

2018 Pre-Budget Submission

August 4th 2017

First Nations Tax Commission
Commission de la fiscalité des premières nations

FNTC Pre-Budget Submission 2018

This is the 20th pre-budget submission (PBS) by the First Nations Tax Commission (FNTC) or its predecessor the Indian Taxation Advisory Board (ITAB). The FNTC has enjoyed an excellent working relationship with the House of Commons Standing Committee on Finance (HoCSCF) and is pleased to provide a submission focusing on the suggested theme of increasing productivity.

Overview

Every FNTC submission has promoted policies to improve Canadian productivity. The FNTC and ITAB have worked with First Nations to bring over $2 billion in direct investment and revenues to First Nation lands. This has significantly increased First Nation and Canadian productivity. The FNTC and the other *First Nations Fiscal Management Act* (FMA) institutions work together to further enhance First Nation and Canadian productivity. While the general public may wonder why First Nations remain impoverished and initiatives never seem to generate results, the FMA has been an unqualified success. Since 2007, 220 First Nations have voluntarily joined the FMA. Participating First Nations have used the powers created by the FMA to bring investment to their lands, improve the values of their property, create employment opportunities for their people and other people, develop their own revenues, and then use these revenues to improve their services and infrastructure. As confirmed by a recent independent study, the FMA is the most successful piece of optional, First Nation-led legislation in Canadian history, which was supported by all parties in this committee almost 20 years ago.

The FMA has demonstrated that First Nations can take charge of their own affairs and do so to the advantage of themselves and Canadians. The FMA model could, and should, be greatly expanded and become an important part of a national strategy for improving productivity and achieving a nation-to-nation framework. It is important because First Nations are a fast growing component of the Canadian labour force and despite the FMA, First Nations land and people remain far less productive on average than Canadian norms. Changing this unfortunate fact will improve Canada's productivity.

The keys to the success of the FMA are fourfold. (1) The FMA is based upon building better infrastructure and lowering the costs of doing business to allow private investment to work on First Nation lands. (2) The FMA efficiently and effectively moves decision making power from other governments to First Nation governments. (3) The FMA gives First Nations more revenue authorities to exercise these powers. (4) The FMA created First Nation institutions to help First Nations implement their new powers. In sum, the FMA provided a model on how best to implement First Nation jurisdictions in a manner that raised productivity.

The FMA is not program based. The FMA is about creating both fiscal and jurisdictional space for First Nations. It gives First Nations the freedom to exercise some responsibilities without the oversight of other governments, it has a legislative accountability framework and it provides tax authority with which to exercise these responsibilities. The combination of fiscal and jurisdictional space also describes true "nation to nation" relations. It is an important part of what is needed in a new fiscal relationship and it has shown how to make First Nations as productive as the rest of the country.

In this year's PBS, the FNTC is advocating a series of initiatives that will build upon this successful model. They are intended to amplify the benefits of the FMA to existing members, and extend the potential of the FMA to other First Nations, such as those entering into self-government or modern Treaty. These initiatives will make the FMA more accessible to First Nations that are not well situated to develop property tax potential. They will create options even for First Nations that choose to not participate in the FMA. These initiatives can also support the conditions needed to help address the uncertainties and difficulties for major resource projects within First Nation territories.

Proposed Initiatives

1. **First Nations Infrastructure Institute (FNII)**. The FNTC and other FMA institutions recommend that the HoCSCF support amending the FMA to add a First Nations Infrastructure Institute. Numerous studies have shown that First Nation infrastructure is more costly, takes longer, and is less sustainable than other Canadian infrastructure. These same studies also show that planning, financing, capacity, jurisdiction and ownership gaps are the principles causes for lingering First Nation infrastructure deficit. FNII can begin to address these root causes by helping First Nations plan, build, operate, maintain, and replace their infrastructure. It will help them identify partners, develop fiscally sustainable capital plans, and integrate community and economic development needs. FNII will ensure that First Nations get the most out of their investments in infrastructure and it will address the business infrastructure gap, which is a major impediment to development for many First Nations. It will also reduce the outstanding infrastructure deficit and liability facing the federal government. FNII will utilize the successful FMA framework and fiscal institutions to help interested First Nations implement their jurisdiction and ownership over their infrastructure.

2. **Aboriginal Resource Tax (ART)**. The FNTC is requesting that the HoCSCF support the development of a comprehensive tax regime that interested First Nations would apply to major resource projects taking place on their traditional territories known as ART. The ART is a pre-specified First Nation tax that would be coordinated with other governments through tax reductions. The ART could replace the present arrangements by which First Nations receive revenues from major resource projects. Those arrangements have been made necessary by Court rulings and the risk aversion of corporations. They are determined through ad hoc negotiations with both provinces and private corporations. These arrangements are costly to negotiate and administer. They add considerably to the time, cost, and risk associated with major investment projects. In short, they are putting major investment at risk, and this investment is ultimately what supports the productivity of the Canadian economy. The proposed ART would accomplish the following:

    a. It would simplify the task of negotiating First Nations consent on major projects. The present process is time consuming, opaque, uncertain, and expensive. It is damaging investment all over the country and this is reducing productivity.
    b. It would help define and formalize First Nation rights over their traditional territories.
    c. It would improve the integrity of the tax system. The present system by which companies provide financial accommodation to First Nations constitutes a de facto tax. It is administratively and economically expensive, poses high compliance costs, and often generates very inconsistent tax rates for the same types of project. Correcting this with an ART is going to improve the efficiency of the tax system.
    d. It will improve the ability of First Nations to finance infrastructure. The present ad hoc mechanisms are not as useful for financing because they are unreliable and not formalized.
    e. It would allow many First Nations who are unable to properly utilize property tax or who need additional revenues to make that all-important first investment in business grade infrastructure to more fully utilize the services of the FMA.

3. **Expansion of Tax Room**. The FNTC recommends that the HoCSCF add the following fiscal powers to the FMA. (a) Tobacco tax. (b) Cannabis tax. (c) Aboriginal Resource Tax. (d) First Nations Goods and Services Tax. First Nations need a fiscal relationship that provides more tax revenue authorities. Fiscal space is a necessary component of nation status. When First Nations are assigned their own tax revenues they gain a stake in the economic success of their regions, they create a feedback mechanism between good economic policy and tax revenues; they reduce the administrative demands and uncertainty associated with pursuing federal transfers and grants, The FNTC also recommends that the HoCSCF suggest that the arbitrary cap on FNGST revenues be removed.

4. **Expanded Institutional Support**. First Nations need more institutions to implement a nation to nation framework. These institutions need to be created by First Nations and understand the unique challenges facing First Nation communities. They must allow relatively small First Nations to retain the advantage of responsiveness while receiving some of the advantages of large governments. First Nation institutions need to provide standards and standardized training; access to expertise; policy and legal templates; and, support in legal and inter-governmental forums, to list just a few. The FNTC requests that the HoCSCF support the continued development of the following institutions based on the FMA:
    a. **FNII** (discussed above).
    b. **First Nations Statistical Institute**. This would help participating First Nations develop statistics that improve their access to capital, support investment facilitation and allow more complex intergovernmental agreements.
    c. **Indigenous Land Registry**. This would provide more certainty and reduce the transaction time associated with protecting property interests on First Nation lands.
    d. **First Nations Major Project Coalition**. This organization works with First Nations to develop their capacities related to making informed business decisions about major projects on their traditional lands. It is an important part of a strategy for making the investment process more transparent, less costly, and timely.
    e. **Public Service Capacity**. First Nations are undergoing a transition from delivering services under negotiated terms to being governments that set their own priorities, design service innovations, and develop their own revenue base. This needs to be supported with training by jurisdiction-oriented accredited education institutions like the Tulo Centre of Indigenous Economics.

5. **New Fiscal Relationship**. All the initiatives described above will support the development of a new and more appropriate, fiscal relationship for First Nations. The foundation of this new fiscal relationship has to include First Nation tax revenues or fiscal space. Fiscal space will allow interested First Nations to exercise some responsibilities without the encumbrances associated with transfer dependency. The appropriate fiscal relationship must be more than a redesigned or even richer transfer. It must provide First Nations with the opportunity to assume the tax powers identified above. The development of such a relationship cannot be accomplished all at once. First Nations need a process whereby they can assume responsibilities as they develop the administrative capacity and fiscal space. One tangible example to begin would be to allow the new revenues to be assigned to the development of First Nations infrastructure with the provision that there be no consideration of other fiscal adjustments while these revenues are committed. This would provide a jurisdiction-based fiscal relationship option for interested First Nations. The FNTC suggests that the HoCSCF recommends the development of such a jurisdiction-based fiscal relationship option for interested First Nations.

6. **Indigenous Land Title Initiative**. The FNTC continues to work with proponent First Nations to promote a system of property rights to give First Nation lands clear title to their land. It would also allow them to create a system of on-reserve property rights that allow individuals to earn wealth, borrow money, and invest with confidence. Clear, easily defined, well protected and transferrable property rights are the most fundamental building blocks of a productive market economy. At present, they do not exist on First Nation lands and this means First Nations are disadvantaged in accessing capital and attracting investment. Correcting this issue will greatly support initiatives to enhance the productivity of First Nation lands and people. The HoCSCF has twice supported this recommendation and the FNTC proposes that it continue to support this proposal. .

Summary

These proposals provide the land and tax foundation for a nation to nation framework with First Nations. They also provide the means to implement this framework through a new fiscal relationship and supportive institutions. To reiterate, the FNTC seeks the support of the HoCSCF to recommend the following in its final report:

- Establish legislation for FNII within the FMA
- Create the fiscal space for ART
- Expand FMA fiscal powers to include ART, FNGST, cannabis, tobacco
- Create a First Nation statistical institute and Indigenous land registry
- Expand Major Projects Coalition and Tulo Centre
- Support a jurisdiction based fiscal relationship option
- Continue to support ILTI