

FISCAL INTERESTS AND TREATY NEGOTIATIONS BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #36: *Cost Neutral Agreements for Local Governments**

This Briefing Note includes information on:

1. LMTAC's current related policy;
2. Background: Local Government Powers Related to Property Taxation
First Nation Powers Related to Property Taxation (Pre and Post-Treaty)
 - a) Pre-Treaty Context: *Indian Act & Indian Self Government Enabling Act*
 - b) Post-Treaty Context: *Tsawwassen Agreement in Principle*
3. Other related LMTAC interests and concerns

1. Fiscal – Existing LMTAC Policy

First Principle #36 – Cost Neutral Agreements for Local Governments

No demand must be placed on Local Government tax revenues or revenue sources resulting from treaty settlements, particularly on the ability of Local Government to derive tax revenue from sources such as property taxes, service fees, utility charges and grants-in-lieu from Crown lands. Any revenue loss to Local Governments arising from treaty settlements must be fully compensated.

2. BACKGROUND:

LOCAL GOVERNMENT POWERS RELATED TO PROPERTY TAXATION

Taxation is the predominant tool for financing the provision of municipal services. Among the various tax tools available to local governments, the ad valorem tax (a tax determined by applying a tax rate to the taxable assessed property value) is the largest source of revenues for all municipalities.

The tax derived from a property depends upon its assessed property value (from the BC Assessment Authority) and the municipal tax rate (stated as a tax per \$1000 of assessed value). Each municipality sets its own tax rates annually and in general, most choose to levy a higher rate on industry and business than on homes.

Community Charter – Municipal Revenue Provisions:

Local Government powers related to taxation were previously provided for under the *Local Government Act* and are now provided for in the *Community Charter* (Part 7- Municipal Revenue).

Under the *Community Charter*, Property Value Taxation is one source of municipal revenue. Each year, after adoption of the financial plan but before May 15, a council must, by bylaw, establish tax rates for:

- a) the municipal revenue proposed to be raised for the year from property taxes, as provided in the financial plan, and
- b) the amounts to be collected for the year by means of rates established by the municipality to meet its taxing obligations in relations to another local government or other public bodies.

*This background briefing note was endorsed in principle by the LMTAC Board, September 29, 2004.

Unless otherwise permitted, property taxes are imposed on all taxable land and improvements in the municipality. For the purposes of generating municipal revenue, the bylaw may establish for each property class a rate for all revenue to be raised, or separate rates for revenue to be raised for different purposes, however the relationship between the different property class rates must be the same for all purposes.

FIRST NATION POWERS RELATED TO PROPERTY TAXATION

Pre-Treaty Context: Federal *Indian Act* & Provincial *Indian Self-Government Enabling Act*

In 1988, the federal *Indian Act* (section 83) was amended to enable First Nations to collect taxes on reserve land leased to non-aboriginal residents or businesses. An Indian Band interested to take advantage of this amendment is required to pass a property taxation bylaw which must be reviewed by the Indian Taxation Advisory Board and then approved by the federal minister.

To prevent double taxation, the B.C. government passed the *Indian Self-Government Enabling Act* in 1990, which provided for provincial and municipal authorities to withdraw from taxing reserve lands when band taxation bylaws take effect.

Post-Treaty Context: *Tsawwassen Agreement in Principle* (July 9, 2003)

- **Taxation Chapter**

Other Taxation and Tax Administration Agreements

Clause 4: *Before the Final Agreement, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreement on terms and conditions;*

- upon which Tsawwassen First Nation will have the authority to impose real property tax on all person in respect of those person's interests in Tsawwassen Lands; and*
- to relieve all persons from real property taxation imposed under authority of British Columbia in respect of their interests in Tsawwassen Lands.*

Tsawwassen Lands

Clause 6: *Tsawwassen First Nation will not be subject to taxation of lands, or interests in lands, on Tsawwassen Lands, on which there are no improvements or on which there is an improvement all or substantially all of which is used for a public purposed and not for a profitable purpose.*

- **Fiscal Relations Chapter**

Own Source Revenue

Clause 17: *Before initialling the Final Agreement, the Parties will negotiate and reach agreement on:*

- a definition of own source revenue capacity, including own source revenue capacity associated with real property taxation.*

3. Other Related LMTAC Interests and Concerns

Potential Impacts to Local Government Revenue Sources Resulting from Treaty Settlements

Treaty settlement land packages have the potential to impact local government revenue sources in the following ways:

- current revenue sources (property taxes and grants-in-lieu)
- future prospects and lost opportunity costs

Local Government Fiscal Interests

The following list of local government interests have been compiled based upon the expressed views of LMTAC members during Executive and Board discussions and in consultation with LMTAC Table Representatives.

- **Compensation For Loss of Revenue-** Local governments must be provided with fair compensation in order to adjust to changes to revenue sources (i.e. property taxes, grants-in-lieu of taxes, and future opportunities) resulting from treaty land selection.

The Province is committed to concluding treaties that are of no net loss to local governments. In order to ensure this outcome, **mitigating factors** must be considered and a **process** must be established to address any losses incurred by local governments. The treatment of compensation/adjustment funding for local governments should be guided by the following principals:

Mitigating Factors (Pre-treaty land selection)

- Pre-treaty, the Province should undertake cumulative impact studies to determine what the anticipated impact land selection will have on affected local governments. This information should be made available to local governments as part of the Province's commitment to transparency.
- Land settlements must take into account what percentage of a municipality's land base is being considered for TSL and the resulting impact to its population/assessment base. (Acknowledge that the magnitude of such impacts on the tax base of smaller municipalities will be greater).
- Provide local governments with sufficient notification of any changes to their existing assessment base in order to plan for necessary adjustments.

Process to Compensate Local Governments (Post-treaty by Effective Date)

- Provide local governments an opportunity to evaluate the impact of treaties on their revenues and expenditures. (For example, comparing the total property taxes collected with the costs to service a particular parcel of land). In the event local governments demonstrate that a loss has resulted, this information would in turn be used to apply for "community adjustment funding".
- Relief provided to local governments should be provided in accordance with a proposed transition or phase-in period to avoid any undue economic strain on local governments.

- **Cost-recovery for Services-** Local governments rely on service agreements with First Nations to recover user fees and service charges. Although service agreements are a matter to be addressed outside treaty, treaty provisions should enable such intergovernmental arrangements.
- **Budgetary Stability-** Capital financing and service provision commitments are based upon expectations of a relatively predictable population/assessment base. Five-year financial plans are now a statutory requirement and mean that local governments value stability and sufficient time to consider the impacts of revenue change. Given the strict budgetary process designated by the *Community Charter*, which requires local governments to balance their budgets, maintaining financial stability is a primary interest of local governments in order that they continue to be able to provide the services expected by their residents, at a reasonable cost.

Significant or unanticipated changes to any of local government revenue sources may result in revenue shortfalls and tax increases, unless there is a corresponding decrease in expenditures.

- **Future Prospects-** Treaty land selection must not unfairly constrain the ability of Local governments to provide for future growth of their communities (in-keeping with the *Regional Growth Strategy*) and benefit from the development potential within those lands.
- **Fairness and Equity** in First Nation and local government taxation authority as it relates to:
 - Establishing tax rates between property classes
 - Exemptions (land and improvements) in relation to the property tax.
- **Economic Development-** Local governments are interested that there be equity in taxation so that a 'level playing field' is established. This issue must be settled in the negotiations. Mechanisms and opportunities for joint and co-ventures and partnerships between the communities should be supported and encouraged both in the negotiation process and in the post- treaty settlement period.
- **Consistent Legislative and Regulatory Regimes-** First Nation government authorities related to such areas as: property taxation, environmental regulation, income tax, sales tax and labour legislation, should be derived from policy frameworks comparable to principal local government documents (*Community Charter*).

Local Government Fiscal Concerns

- **Reduced Competitive Equity-** If First Nation governments are provided with competitive tax advantages over neighbouring local governments, this would negatively impact local economies and the ability for non-First Nation governments to attract business investments.
- **Inability to Recover Costs for Services-** All existing and future service agreements must be respected to ensure local governments receive financial contributions from all users of local government programs, services and infrastructure (*LMTAC First Principle #35*).
- **Increased Infrastructure Maintenance Costs-** Unanticipated development of lands that are transferred for treaty settlements will place a strain upon the transportation corridors and service infrastructure of adjacent municipalities, resulting in increased maintenance costs.