

Maa-nulth Final Agreement: Taxation

The Maa-nulth Final Agreement was negotiated by the Government of Canada, the Government of British Columbia and the Maa-nulth First Nations. The five Maa-nulth First Nations are Ucluelet First Nation, Huu-ay-aht First Nations, Toquaht Nation, Ka:yu:k't'h/Che:k'tles7et'h' First Nations, and Uchucklesaht Tribe, all located on the west coast of Vancouver Island. The Maa-nulth First Nations represent about 2,000 people. Maa-nulth means "villages along the coast" in the Nuu-chah-nulth language.

The Maa-nulth Final Agreement is among the first Final Agreements reached in the province under the British Columbia treaty process. The Final Agreement sets out each Maa-nulth First Nation's rights and benefits respecting land and resources, and self-government over their lands and resources and their citizens. The Final Agreement provides certainty for all parties with respect to ownership and management of lands and resources and the exercise of federal, provincial and Maa-nulth First Nation governmental powers and authorities.

The negotiation of a Final Agreement marks Stage Five of the six-stage British Columbia treaty process, and is the conclusion of substantive treaty negotiations. Once ratified by all parties, the Final Agreement will become a treaty through legislation. It will be a constitutionally-protected, legal agreement which creates mutually binding obligations and commitments.

TAXATION AND MAA-NULTH FIRST NATIONS

Taxation is an important element of the Maa-nulth Final Agreement as it can contribute to the foundation for future revenue capacity for the Maa-nulth First Nation governments. The main tax-related elements addressed through the treaty are: the taxation powers of each Maa-nulth First Nation government, the tax treatment of members, and the tax treatment of Maa-nulth First Nation governments and of the various assets transferred or recognized under the treaty.

TAXATION POWERS OF MAA-NULTH FIRST NATIONS GOVERNMENTS

The power to tax is a basic feature of governments. Not only does it provide financial resources to deliver various programs and services, it also serves as a means of increasing the government's accountability to taxpayers.

In the context of treaty negotiations, each Maa-nulth First Nation government will have the ability to levy direct taxes on its citizens within its treaty settlement lands, known as Maa-nulth First Nation Lands. Outside of the treaty, Canada and British Columbia are prepared to negotiate how a Maa-nulth First

Nation tax could also apply to non-members within Maa-nulth First Nation Lands. In either case, the Maa-nulth First Nation governments' tax powers will not be exclusive, but will operate concurrently with the continuing tax authority of Canada and British Columbia provided in the Canadian Constitution.

Canada has already negotiated such agreements with other First Nations in Canada. Under these agreements, Canada has vacated some of its tax room – that is, agreed not to impose a portion of its taxes – in order to allow the First Nation to impose sales or personal income taxes that are fully harmonized with the taxes vacated by Canada. These agreements coordinate the taxes and ensure that the tax burden on taxpayers remains the same both on and off Maa-nulth First Nation Lands.

The Final Agreement contemplates that each Maa-nulth First Nation government could enter such arrangements for the coordination and harmonization of its taxes. Such arrangements would allow the Maa-nulth First Nation government to implement taxation in an effective and efficient manner, while avoiding the costs associated with the design, implementation and administration of an independent tax system.

PROPERTY TAXES

Under a non-treaty agreement with British Columbia, each Maa-nulth First Nation government will collect all property taxes applicable to both Maa-nulth First Nations citizens and non-members resident on Maa-nulth First Nation Lands. This agreement will apply to treaty settlement land including that which might formerly have been part of a municipality. Each Maa-nulth First Nation government will be responsible for providing local services to all residents on its lands.

TAX TREATMENT OF MAA-NULTH FIRST NATION GOVERNMENTS

The tax treatment of each Maa-nulth First Nation government and its entities will be addressed primarily in an agreement outside the treaty called the Tax Treatment Agreement. For example, the Tax Treatment Agreement will:

- provide refunds of the federal goods and services tax and provincial social service and motor fuel taxes for non-profit or public purpose activities of each Maa-nulth First Nation government; and
- provide each Maa-nulth First Nation government the same exemption from income tax under the federal Income Tax Act as provided to other public bodies performing a function of government in Canada.

TAX TREATMENT OF MEMBERS

Under the *Indian Act*, status Indians are eligible for a tax exemption in respect of property (including income) situated on a reserve. As the relationship between the federal and provincial governments and the Maa-nulth First Nations is redefined and the *Indian Act* ceases to apply after the effective date of the treaty, the tax exemption under the *Indian Act* will also cease to apply.

The tax exemption will be phased out after eight years for transaction (e.g. sales) taxes and 12 years for all other taxes, including income taxes, to allow affected individuals to prepare and adapt to the change in their taxable status.

NON-MEMBER REPRESENTATION

Each Maa-nulth First Nation government will provide that non-Maa-nulth First Nation members who ordinarily reside on Maa-nulth First Nation Lands, and registered owners of real property (or their representatives) who do not ordinarily reside on Maa-nulth First Nation Lands, will have the ability to participate in discussions and vote on taxation decisions that directly and significantly affect them, including the rate of tax, tax exemptions and the expenditure of tax revenues.

Non-members will have access to the appeal and review procedures established by a Maa-nulth First Nation government. ■