

**POLICY FOR
FIRST NATION ANNUAL TAX RATES BY-LAWS, 2020**

**PART I
PREAMBLE**

WHEREAS:

- A. Section 83(1) of the *Indian Act* recognizes First Nation jurisdiction to raise revenue through property tax;
- B. A Memorandum of Understanding (MOU) between the First Nations Tax Commission and the Minister of Indian Affairs and Northern Development (now the Minister of Indigenous Services) provides for the Commission to review and recommend section 83 by-laws for ministerial approval; and
- C. Policies are established by the Commission to further the policy objectives expressed in the Memorandum of Understanding, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues.

**PART II
PURPOSE**

This Policy sets out the requirements that should be met for First Nation rates by-laws enacted under section 83(1) of the Act. This Policy is used by the Commission in its review and recommendation of First Nation by-laws.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. This Policy is intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

This Policy is established pursuant to section 1.2 of the MOU.

**PART IV
APPLICATION**

This Policy applies to every annual rate by-law submitted to the Commission for review and recommendation pursuant to the MOU.

**PART V
CITATION**

This Policy may be cited as the *Policy for First Nation Annual Tax Rates By-laws, 2020*.

**PART VI
DEFINITIONS**

In this Policy:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5 and the regulations enacted under that Act;

“agricultural property” means an interest in land classified as “non-arable (range)” or “other agricultural” in Saskatchewan;

“annual rate of national inflation” means the change in the Annual Average Consumer Price Index for

Canada, All-Items, maintained by Statistics Canada;

“assessed value” means the value of an interest in land for assessment purposes, as determined under an assessment by-law;

“assessment by-law” means a by-law enacted by a First Nation under subsection 83(1) of the Act that provides for the assessment of property;

“average tax bill” means either

(a) the mean of the tax bills of all taxpayers in a property class, net of all grants, or

(b) the median tax bill of a representative taxpayer in a property class, net of all grants;

“by-law” means an annual by-law enacted under subsection 83(1) of the Act that establishes the property tax rates to be applied by the First Nation;

“Commission” means the First Nations Tax Commission established under the *First Nations Fiscal Management Act*, S.C. 2005, c. 9;

“Council” has the same meaning as “council of the band” in subsection 2(1) of the Act;

“First Nation” means a band as defined in the Act;

“interest in land” or “property” means land or improvements, or both, in a reserve and, without limitation, may include any interest in land or improvements, any occupation, possession or use of land or improvements, and any right to occupy, possess or use land or improvements;

“property class” means each of the categories of property established in the First Nation’s assessment by-law for the purposes of assessment and taxation;

“Property Taxation By-law Policy” means the Commission *Policy for First Nation Property Taxation By-laws, 2017*;

“Province” refers to the province in which the reserve is situated;

“reference jurisdiction” means a taxing jurisdiction, located adjacent to the First Nation, that is identified for the purpose of comparing a First Nation’s tax rates;

“reference jurisdiction transition plan” means a plan that meets the requirements of subsection 9.2;

“reserve” means any land set apart for the use and benefit of a First Nation within the meaning of the Act;

“tax district” means a tax district established in a First Nation’s property taxation by-law;

“taxable area” means the total area of the interest in land or portion of the interest in land, rounded to the nearest acre;

“taxable property” has the meaning given to that term in the Property Taxation By-law Policy;

“taxation by-law” means a by-law made under paragraph 83(1)(a) of the Act; and

“transition period” has the meaning given to that term in the Property Taxation By-law Policy.

Except as otherwise provided in this Policy, words and expressions used in this Policy have the same meaning as in the Act.

PART VII
POLICY

1. Establishing Tax Rates

1.1 The By-law must establish for each property class a tax rate as

- (a) a rate for each dollar (\$1) of assessed value;
- (b) a rate for each one hundred dollars (\$100) of assessed value; or
- (c) a mill rate for each one thousand dollars (\$1000) of assessed value.

1.2 As an exception to subsection 1.1, a By-law may establish a tax rate for a property class on a different basis where the First Nation's reference jurisdiction establishes a tax rate on a different basis within that property class.

2. Application of Tax Rates Within a Property Class

2.1 The By-law must provide for the equal application of tax rates within a property class, except as provided in subsection 2.2.

2.2 The By-law may establish multiple tax rates within a property class where multiple tax rates are established in the First Nation's reference jurisdiction, provided the By-law

- (a) establishes the same number of tax rates within each property class, and
- (b) uses the same criteria for the application of those tax rates within each property class, as are used in the reference jurisdiction.

3. Tax Districts and Multiple Reference Jurisdictions

3.1 Where a First Nation has established one (1) or more tax districts,

- (a) the First Nation may establish a tax rate for each property class in each tax district; and
- (b) the requirements in this Policy respecting setting tax rates must be interpreted to apply separately within each tax district.

3.2 Where a First Nation has multiple reserves and has more than one (1) reference jurisdiction in respect of its reserves, the By-law may establish different tax rates for different reserves, provided that those reserves with the same reference jurisdiction must have the same tax rate in each property class.

4. Minimum Tax Limit

Where the By-law establishes a minimum amount of tax to be levied on properties within a property class, the amount of the minimum tax must not exceed one hundred dollars (\$100), except as provided in section 5.

5. Exceptions to Minimum Tax Limit

5.1 The By-law may establish a minimum tax in an amount greater than one hundred dollars (\$100) where required to create a fair taxation regime because of one or more of the following circumstances:

- (a) the First Nation wishes to harmonize with minimum tax amounts established in the Province or the reference jurisdiction; and
- (b) the First Nation's costs of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

5.2 As an exception to subsection 5.1, where a First Nation has included transition provisions in its taxation by-law in accordance with section 6 of the Property Taxation By-law Policy, in each year of the transition period the By-law must establish a minimum tax that is equal to the service fee charged by the First Nation in the year prior to its first taxation year.

6. Rate Setting in First Taxation Year

6.1 Where a First Nation is exercising property taxation powers for the first time, the First Nation must apply the same assessment practices as the former taxing authority or the reference jurisdiction, as the case may be, and its By-law must

- (a) establish the same tax rates established by the former taxing authority in the current year; or
- (b) where there is no former taxing authority, establish the same tax rates as the reference jurisdiction in the current year.

6.2 As an exception to subsection 6.1, where a First Nation has included transition provisions in its taxation by-law in accordance with section 6 of the Property Taxation By-law Policy, in each year of the transition period the By-law must establish tax rates for the applicable property classes that are consistent with those transition provisions.

7. Rate Setting in Subsequent Years

7.1 In the second and all subsequent years that a First Nation exercises property taxation powers, the By-law must establish tax rates based on the First Nation's budget for the expenditure of local revenues that

- (a) when applied, result in an average tax bill for each property class that has not increased from the previous year by more than
 - (i) the annual rate of national inflation from the previous year, or
 - (ii) the average tax bill increase for each property class in the reference jurisdiction from the previous year; or
- (b) are identical to the tax rates established in the reference jurisdiction in the current year and the immediately preceding year, including by establishing the same number of tax rates where the reference jurisdiction establishes multiple tax rates within a property class.

7.2 As an exception to subsection 7.1, where a First Nation has included transition provisions in its taxation by-law in accordance with section 6 of the Property Taxation By-law Policy, in each year of the transition period the By-law must establish tax rates for the applicable property classes that are consistent with those transition provisions.

7.3 For the purposes of paragraph 7.1(a), where

- (a) a representative taxpayer is used to determine the average tax bill, that taxpayer must have been a taxpayer in the previous and must be a taxpayer in the current year;
- (b) the representative taxpayer holds property that has experienced a change in assessed value attributable to new construction or to the addition of lands to the property, that change in assessed value must be excluded when determining the average tax bill increase; and
- (c) the mean of the tax bills of all taxpayers is used to determine the average tax bill, any changes in assessed values to properties in that property class that are attributable to new construction or to the addition of lands to properties must be excluded when determining the average tax bill increase.

7.4 For the purposes of paragraph 7.1(a), where the assessed value of a property is determined using a rate set by reference to a provincial regulation,

(a) that property may be excluded when determining the average tax bill increase in a property class; or

(b) the average tax bill may be calculated by excluding any increases or decreases in the assessed value of that property from the previous year to the current year.

7.5 In order to meet the requirements in subparagraph 7.1(a)(ii) or paragraph 7.1(b), the First Nation must obtain and provide to the Commission all required information from the reference jurisdiction, to the satisfaction of the Commission.

7.6 Where a By-law establishes tax rates as provided in paragraph 7.1(b), the First Nation must use assessment practices that are identical to the reference jurisdiction in the current year and the immediately preceding year.

8. Justifications for Additional Rate Increases

8.1 Where a By-law establishes a tax rate that does not meet the criteria set out in subsection 7.1, the First Nation may provide justification of the rate for Commission consideration, on one (1) or more of the following bases:

(a) the First Nation's costs of providing local services, such as water, sewer, waste collection, fire protection and roads, have increased significantly from the previous year;

(b) the rate is consistent with the First Nation's reference jurisdiction transition plan; or

(c) the taxpayers in the affected property class support the proposed rate.

8.2 Where subsection 7.2 applies and a By-law establishes a tax rate that is higher than and consistent with the transition provisions in the First Nation's taxation by-law, the First Nation may provide justification of the rate for Commission consideration on the basis set out in paragraph 8.1(c).

8.3 Where a First Nation proposes to justify a tax rate under paragraph 8.1(a), the First Nation must provide to the Commission a signed service agreement evidencing the increased costs, or written evidence of the increased costs signed by the First Nation's chief financial officer.

8.4 Where a First Nation proposes to justify a tax rate under paragraph 8.1(c), the First Nation must provide to the Commission letters of support from individual taxpayers or taxpayer associations representing

(a) at least fifty percent (50%) of the taxpayers in that property class; and

(b) taxpayers holding at least fifty percent (50%) of the total assessed values in that property class.

9. Justification on the Basis of Transition to Reference Jurisdiction Rate Setting

9.1 In the first year that a First Nation proposes to justify its tax rates under paragraph 8.1(b), the First Nation must provide to the Commission, at the time of submitting its By-Law to the Commission for review and consideration of recommending ministerial approval,

(a) a reference jurisdiction transition plan that meets the requirements set out in this section;

(b) confirmation that the First Nation, in the previous taxation year, completed the requirements set out in section 11.

9.2 A First Nation that proposes to justify an increase in its tax rates in one or more property classes in order to transition to setting tax rates that are identical to the reference jurisdiction must develop a reference jurisdiction transition plan that

(a) provides a justification for the proposed increases in tax rates that relates either to providing a higher level of local services to the taxpayers, or to building new or replacement local service infrastructure; and

(b) sets out how tax rates will increase incrementally in one (1) or more property classes over a period of not more than five (5) years in order to match the reference jurisdiction rates in all property classes.

10. Notice of Tax Rates By-laws

10.1 A First Nation must, in each year before submitting its annual rates by-law to the Commission for review and consideration of recommending ministerial approval, give notice of its tax rates by-law

(a) by posting a copy of the by-law on the *First Nations Gazette* website or in a prominent place on the First Nation's website; or

(b) by holding a public meeting at which taxpayers may meet with the tax administrator or members of Council to discuss the tax rates by-law.

10.2 Where a First Nation justifies a tax rate under paragraph 8.1(a) or (b), the First Nation must provide a description of the justification as part of the notice required under subsection 10.1, or inform the taxpayers of the justification when giving notice under paragraph 10.1(b).

11. Notice of Transition to Reference Jurisdiction Rate Setting

11.1 Where a First Nation proposes to justify its tax rates under paragraph 8.1(b), the requirements set out in this section apply.

11.2 The First Nation must provide a written notice, in accordance with subsection 11.4, stating

(a) that the First Nation intends to develop a reference jurisdiction transition plan in order to transition to setting tax rates that are identical to the reference jurisdiction; and

(b) the time and place of a taxpayer meeting to review and discuss the reference jurisdiction transition plan.

11.3. The First Nation must hold the taxpayer meeting referenced in subsection 11.2 at the time and place referenced in the notice.

11.4 At least fourteen (14) days before the date of the taxpayer meeting referenced in subsection 11.2, the notice required under subsection 11.2 must be

(a) delivered to every taxpayer and any taxpayer association;

(b) posted in the First Nation's administrative offices and in at least two (2) other locations on the reserve; and

(c) published on the *First Nations Gazette* website and in a prominent place on the First Nation's website.

12. Timing of Annual Tax Rates By-laws

A Council that makes a taxation by-law must make an annual tax rates by-law at least once each year on or before November 30 of the taxation year to which the annual tax rates by-law applies.

PART VIII POLICY FOR AGRICULTURAL PROPERTIES IN THE PROVINCE OF SASKATCHEWAN

13. Application of this Part

13.1 This Part applies to the setting of tax rates for agricultural property where a First Nation's taxation by-law provides for taxation on the basis of the taxable area of the agricultural property.

13.2 Where this Part applies to the setting of tax rates in a property class, Part VII does not apply to the setting of tax rates in that property class.

14. Rate Setting Per Acre

14.1 The By-law must establish a single tax rate in a property class that is equal to or less than the amount levied per acre in the same property class in the reference jurisdiction.

14.2 For the purposes of subsection 14.1, the amount levied per acre in the reference jurisdiction must be determined by dividing the total property tax revenues within the property class by the total number of acres of property within that property class.

15. No Minimum Tax

A By-law must not establish a minimum tax in a property class to which this Part applies.

PART IX REVOCATION AND COMING INTO FORCE

Revocation

The *Policy for First Nations Tax Rates By-laws, 2018* that was established and effective on June 28, 2018, is hereby revoked.

Coming Into Force

This Policy is established and in effect as of April 29, 2020.

PART X ENQUIRIES

All enquiries respecting this Policy should be directed to:

First Nations Tax Commission
321-345 Chief Alex Thomas Way
Kamloops, BC V2H 1H1
Telephone: (250) 828-9857

or

First Nations Tax Commission
202 – 190 O'Connor Street
Ottawa, ON K2P 2R3
Telephone: (613) 789-5000 ext. 204