

EXPLANATORY NOTES

SAMPLE FIRST NATION ANNUAL RATES LAW

The *First Nations Fiscal and Statistical Management Act* (“FSMA”) provides a framework for First Nation real property taxation on reserve. First Nation fiscal powers are set out in Part 1 of the FSMA and include, under section 5, the authority to make laws respecting taxation for local purposes, including establishing a mechanism to set tax rates and apply them to the assessed value of lands. As part of its real property taxation regime, each First Nation will require an assessment law and a taxation law, as well as annual tax rates and expenditure laws. Paragraph 10(a) of the FSMA requires a First Nation to, at least once each year at a time prescribed by regulation, make a law setting the rate of tax to be applied by the First Nation for the taxation year.

Laws enacted under the FSMA must comply with all statutory requirements, any regulations made under paragraph 36(1)(d) of the FSMA and any standards established by the First Nations Tax Commission (“Commission”) under section 35 of the FSMA. Canada has made the *First Nations Rates and Expenditure Laws Timing Regulations*, which requires rates and expenditure laws to be enacted each year by the date set for tax rates for non-reserve land by the province in which the reserve is located. The Commission has established Standards for First Nation Rates Laws (“Rates Law Standards”) that provide further requirements for the form and content of rates laws.

The sample First Nation Annual Rates Law (“sample law”) complies with the FSMA requirements, the Regulations and the Rates Law Standards. It provides a best practices sample for use and adaptation by First Nations in drafting their own FSMA rates laws.

The rates law is a straight-forward law that sets the First Nation’s tax rates each year. These Explanatory Notes provide a synopsis of the sample law and highlight issues to be considered by First Nations in drafting their rates laws.

RECITALS

The sample sets out two versions of recital B. The First Nation should choose the first version if it has made new laws under the FSMA. The second version should be used where the First Nation is operating under section 83 by-laws that have transitioned to laws under the FSMA. The version that is not used should be deleted.

SECTION 1

This section sets out the legal name for the First Nation’s law. Proper citation of the law should be used when referencing it in literature, forms or other laws.

SECTIONS 2 AND 6

The definitions used in the sample law are the same as set out in the *Indian Act*, the FSMA and the Regulations. Section 6 of the sample law provides for the definitions in the First Nation’s taxation and assessment laws to apply to this law where terms are not otherwise defined.

SECTION 3

Section 3 sets out the mechanism for applying the tax rates to the assessed value of properties. The tax rates for each property class (property classes are established in the assessment law) are set out in the Schedule.

A tax rate must be set for each property class in which a First Nation has assessable properties. First Nations are encouraged to set a tax rate for every property class; however, this is not a requirement. There can only be one rate for each property class and it must be applied in the same manner to every property within the class. The Rates Law Standards require rates to be established per one dollar (\$1), one hundred dollars (\$100) or one thousand dollars (\$1000) of assessed value.

Where a First Nation is exercising its property taxation powers for the first time, the Rates Law Standards require the tax rate to be the same as used by the former taxing authority (if any) in the current year. If there is no former taxing authority, the tax rates must be the same as those used by the First Nation’s reference jurisdiction in the current year. The reference jurisdiction is a local government jurisdiction that the First Nation has selected for the purposes of setting its tax rates and comparing its local service standards.

In second and subsequent taxation years, the Rates Law Standards set further requirements for establishing tax rates that must be followed by First Nations.

SECTION 4

This section provides wording for a First Nation that wishes to set a minimum tax to be applied to properties within a property class. Setting a minimum tax means that holders with low assessed values may be required to pay more tax than would be assessed by multiplying the tax rate by the assessed value.

The Rates Law Standards provide that a minimum tax must not exceed one hundred dollars (\$100) except where required to create a fair taxation regime because of one or more of the following circumstances:

- a. the First Nation had established a higher minimum tax amount in its taxation regime existing at the time of being scheduled under the FSMA;
- b. to harmonize with minimum tax amounts established in the relevant province or the reference jurisdiction; and
- c. the First Nation’s costs of providing services to properties with lower assessed values exceeds one hundred dollars (\$100).

The minimum tax, if any, must be set each year within the First Nation’s rates law.

SECTION 5

This section is required by subsection 5(5) of the FSMA. All rates laws must include a “third-party management” provision that appoints the Financial Management Board as the First Nation’s agent under a property taxation law, in certain defined circumstances under the FSMA.

SECTION 10

This section provides for when the law will come into force. This can be either on the approval of the Commission or a later date as specified by Council.