

CHAPTER 37: TAXATION

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37.1 DEFINITIONS

In this Chapter:

“Dehcho Capital” means all land, cash and other assets transferred to or recognized as owned by the Dehcho Government or a Dehcho Community Government under the Dehcho Agreement.

“Direct” has the same meaning, for purposes of distinguishing between a direct tax and an indirect tax, as in class 2 of section 92 of the *Constitution Act, 1867*; and

“Person” includes an individual, a partnership, a corporation, a trust, a joint venture, an unincorporated association, a government or an agency or subdivision of a government, and their respective heirs, executors, administrators and other legal representatives.

37.2 DIRECT TAXATION POWERS

37.2.1 The Dehcho Government may make laws in relation to:

- a) direct taxation of Dehcho Citizens¹, within Dehcho Ndehe and Dehcho Communities², in order to raise revenue for Dehcho Government purposes; and
- b) the implementation of any taxation agreement entered into between

¹ Dehcho would like the Dehcho Government’s direct tax power to apply to all residents, not only to Dehcho citizens. *Canada’s approach is to provide a Dehcho Government direct tax power in respect of Dehcho Citizens within Dehcho Ndehe and Dehcho Communities in the final agreement and provide that the parties may negotiate agreements in respect of Dehcho Government direct tax powers over persons other than Dehcho Citizens within Dehcho Ndehe and Dehcho Communities outside the final agreement.*

² *Does the geographic scope of the Dehcho Government’s direct tax power include Hay River? Dehcho would like to discuss this further once the parties have more information.*

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it and Canada or the Government of the Northwest Territories, or both.

37.2.2 The Dehcho Government law-making authority under 37.2.1 shall not limit the taxation powers of Canada or the Government of the Northwest Territories.

37.2.3 Any Dehcho Law made under this chapter or any exercise of power by the Dehcho Government is subject to and shall conform with Canada's International Legal Obligations in respect of taxation.

37.3 TAXATION POWER AGREEMENTS

37.3.1 From time to time, at the request of the Dehcho Government, Canada and Government of the Northwest Territories, together or separately, may negotiate and attempt to reach agreement³ with the Dehcho Government respecting:

- a) the extent to which the Direct taxation law-making authority of the Dehcho Government under 37.2.1 (a) may be extended to apply to Persons other than Dehcho Citizens, within Dehcho Ndehe or Dehcho Communities; and
- b) the manner in which the Dehcho Government law-making authority under 37.2.1 (a), as extended by the application of 37.3.1 (a), will be coordinated with existing federal or territorial tax systems, including:
 - i. the amount of tax room that Canada or Northwest Territories may be prepared to vacate in favour of taxes imposed by the Dehcho Government, and
 - ii. the terms and conditions under which Canada or Northwest Territories may administer, on behalf of the Dehcho Government, taxes imposed by the Dehcho Government.⁴⁵

³ Dehcho would like the final agreement to set out a process for the coordination of tax powers. **The parties to discuss alternative mechanisms to achieve Dehcho's interests.**

⁴ Alternative paragraph (b): "the manner in which taxation by the Dehcho Government will be coordinated with federal and territorial tax systems." **[The Tax Working Group proposes that this footnote be deleted.]**

⁵ **Dehcho proposes further discussion with GNWT on tax sharing.**

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37.3.2 Notwithstanding Chapter 36, an agreement under 37.3.1 may provide for an alternative approach to the appeal, adjudication or enforcement of matters related to a Dehcho Law in respect of taxation.

37.4 **DEHCHO NDEHE AND DEHCHO COMMUNITY LANDS**

37.4.1 The Dehcho Government is not subject to taxation of Dehcho Ndehe or Dehcho Community Lands or interests in Dehcho Ndehe or Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.⁶

37.4.2 A Dehcho Community Government is not subject to taxation of its Dehcho Community Lands or interests in its Dehcho Community Lands on which there is no improvement or on which there is an improvement all or substantially all of which is used for a public purpose and not for a profitable purpose.

37.4.3 **For greater certainty, the exemption from taxation in 37.4.1 and 37.4.2 does not apply to a taxpayer other than the Dehcho Government or a Dehcho Community Government nor does it apply with respect to a disposition of Dehcho Ndehe or Dehcho Community Lands, or interests in those lands, by the Dehcho Government or a Dehcho Community Government.⁷**

37.4.4 For federal and territorial income tax purposes, proceeds of disposition received by the Dehcho Nation or a Dehcho Community Government on expropriation of Dehcho Ndehe or Dehcho Community Lands in accordance with Chapter 13 will not be taxable

37.5 **TRANSFER OF DEHCHO CAPITAL**

37.5.1 A transfer under this Agreement of Dehcho Capital and recognition of ownership of Dehcho Capital under this Agreement is not taxable.

37.5.2 For purposes of 37.5.1, an amount paid to a Dehcho Citizen is deemed to be a transfer of Dehcho Capital under this Agreement if the payment:

⁶ NWT proposes that the Tax Working Group review the wording of 37.4.1 and 37.4.2.

⁷ The Tax Working Group proposes adding this provision. It is standard language found in other comprehensive land claim agreements to clarify the scope of the exemptions in 37.4.1 and 37.4.2. It is for greater certainty and does not change the scope of the exemptions in 37.4.1 and 37.4.2

- a) can ~~reasonably~~ be considered to be a distribution of a Capital Transfer received by the Dehcho Government; and
- b) becomes payable to the Dehcho Citizen within 90 days and is paid to the Dehcho Citizen within 270 days from the date that the Dehcho Government receives the Capital Transfer.⁸

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37.5.3 For federal and territorial income tax purposes, Dehcho Capital is deemed to have been acquired by the Dehcho Government or a Dehcho Community Government, as the case may be, at a cost equal to its fair market value on the latest of:

- a) the Effective Date; and
- b) the date of transfer of ownership or the date of recognition of ownership, as the case may be.

37.6 INDIAN ACT TAX EXEMPTION AND TRANSITIONAL EXEMPTION

37.6.1 The Dehcho Agreement will provide that section 87 of the *Indian Act* will not apply to the Dehcho Nation, Dehcho Dene or any Dehcho Ndehe as of the Effective Date.

37.6.2 The Dehcho Agreement may provide for transitional tax measures to address the fact that section 87 of the *Indian Act* will no longer apply as of the Effective Date.

37.7 TAX TREATMENT AGREEMENT

37.7.1 Prior to the Dehcho Agreement, the Parties will enter into a tax treatment agreement, which will come into effect on the Effective Date. The tax treatment agreement will address the following subject matters:

- a) the income tax treatment of the Dehcho Government and its entities;
- b) the sales tax treatment of the Dehcho Government and its entities;
- c) the tax treatment of the transfer of Dehcho Capital between the Dehcho Government and its subsidiaries;

⁸ Canada views this provision as optional. Dehcho to consider further.

- d) the tax treatment of a Dehcho settlement trust;
- e) donations, including artifacts , made to the Dehcho Government; and
- f) any other matters agreed to by the Parties.^{9 10}

37.8 AGREEMENT UNDER THIS CHAPTER

37.8.1 Any taxation power agreement or tax treatment agreement negotiated in accordance with this chapter would not be part of the Final Agreement, nor be a treaty or land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

⁹ Dehcho would like to discuss the possibility of a tax credit in respect of amounts contributed to a candidate in a Dehcho Government election. *NWT's view is that a territorial credit of this nature would not be consistent with the purposes of the territorial political contributions tax credit. Canada's view that it would not be cost-efficient for Canada to administer and enforce a political contribution tax credit for Dehcho Government elections. Canada submits that if the Dehcho Government were to wish to encourage political contributions to Dehcho Government elections, it could do so through an expenditure program rather than the tax system.*

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¹⁰ Dehcho would like a provision stating that if the TTA is terminated, the parties will make best efforts to negotiate a new one.