

# FIRST NATIONS LEADERSHIP COUNCIL



BRITISH COLUMBIA  
ASSEMBLY OF  
FIRST NATIONS

1004 Landooz Rd.  
Prince George, BC  
V2K 5S3

Ph: 778-945-9910  
Fx: 778-945-9916



FIRST  
NATIONS  
SUMMIT

1200-100 Park Royal South  
West Vancouver, BC  
V7T 1A2

Ph: 604-926-9903  
Fx: 604-926-9923  
Toll Free: 866-990-9939



UNION OF  
BRITISH COLUMBIA  
INDIAN CHIEFS

401 – 312 Main Street  
Vancouver, BC  
V6A 2T2

Ph: 604-684-0231  
Fx: 604-684-5726

April 6, 2021

Honourable Selina Robinson  
Minister of Finance  
PO Box 9048 Stn Prov Govt  
Victoria, BC V8W 9E2

Via Email Only: [FIN.Minister@gov.bc.ca](mailto:FIN.Minister@gov.bc.ca)

Dear Minister Robinson:

**RE: Amending the *Property Transfer Tax Act* to Immediately offer Exemptions to First Nations in British Columbia**

We write concerning the *Property Transfer Tax Act* (PTTA) and its implications for First Nations in British Columbia. We request immediate amendments to the PTTA and its regulations to include Property Transfer Tax (PTT) exemption for First Nations and First Nation Entities. Resolutions supporting this request were recently approved by Chiefs in Assembly at the Union of BC Indian Chiefs and BC Assembly of First Nations.

As you know, in November 2019, the Province passed the *Declaration on the Rights of Indigenous Peoples Act* (“Declaration Act”) which requires that “In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.” We remind you that the Declaration Act places a positive obligation on the Government of British Columbia to ensure that all laws, policies and practices in British Columbia be brought in alignment with the *UN Declaration on the Rights of Indigenous Peoples* (“UN Declaration”) in consultation and cooperation with Indigenous peoples. The Declaration Act also addressed the requirement of the Government engaging properly with Indigenous governing bodies, representing the Indigenous rights and title holders.

We must first bring your attention a problem for our Nations because they are not treated properly as Indigenous Governments. First Nations are unable (under the colonial laws of Canada and British Columbia) to hold land titles in our own right. Yet, corporate entities may hold lands. This has resulted in many distortions and ongoing discrimination, requiring our Nations to use mainstream corporate or charitable structures to hold land that is set aside for the benefit of all Indigenous rights holders.

In contrast, other government such as municipalities, regional districts, improvement districts, regional hospital districts, library boards and boards of school trustees have been granted PTT exemption pursuant to subsection 37(2)(b) of the PTTA. First Nations are currently not offered the same exemption, even though our existence and rights are not delegated or derived from provincial authority, as was recognized in the *Declaration Act*.

The Province currently charges First Nations the PTT on lands transferred to First Nations and First Nations Entities, pursuant to the PTTA. These First Nations entities (such as corporations or limited partnerships) shares or partnership units are typically majority and beneficially owned by the First Nations. The Province takes the position that PTT will be payable by First Nations and the First Nation Entities on all future transfers of fee simple land, including subdivisions of fee simple land, despite the fact that the majority beneficial ownership of those lands rests with the First Nations. In our view, this is contrary to the government's obligation under the Declaration Act. Further, we consider the Province's position unacceptable, given that lands transferred to First Nations rightfully belong to First Nations.

We are aware that First Nations are engaged in a consultation process with the Province regarding the impacts on their aboriginal title and rights which would result from the disposal of certain Provincial Crown lands that are considered to be surplus to the needs of the Crown agencies or corporations involved. A number of First Nations engaged in the consultation process have been negotiating the transfer of certain of those Provincial Crown lands to entities such as corporations or limited partnerships, given that Provincial legislation precludes most First Nations in the province from owning land in fee simple directly. The end result of these negotiations, under the current PTTA structure, will result in these First Nations being required to pay the PTT.

Some of our Nations are in a process where they are buying land on the open market to protect lands for addition to their land base for the benefit of their members. The Indigenous governments should not be treated as private citizens or speculators. These governments are trying to correct a wrong done to their peoples, and enhance the lands they hold for the mutual benefit of all members of the Nation.

As well, economic accommodations received by First Nations are negatively impacted and, in certain scenarios, the PTT paid to the Province by First Nations Entities will completely dissolve the accommodation. Further to this, First Nations Entities are often utilized to harness the limited economic development opportunities available to First Nations. These efforts are often stymied through the imposition of these taxes. First Nation Entities, as the instrument of First Nation governments, should be exempt from paying PTT in accordance with the spirit of the Province's Declaration Act and the honour of the Crown.

It is our respectful request that this situation be remedied at your earliest opportunity. We believe straightforward amendments should be advance to the PTTA and its regulations to include PTT exemption for Indigenous governing bodies and Indigenous governing bodies entities.

We would be pleased to meet with you and appropriate officials to discuss this request. Please have your officials contact Morris Prosser via email at [Morris@ubcic.bc.ca](mailto:Morris@ubcic.bc.ca) to make the necessary arrangements for further discussion of this request.

We look forward to receiving your early response.

Sincerely,  
**FIRST NATIONS LEADERSHIP COUNCIL**

**On behalf of the FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

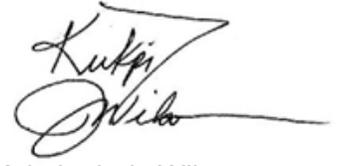
**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Kukpi7 Judy Wilson

**On behalf of the BC ASSEMBLY OF FIRST NATIONS:**



Regional Chief Terry Teegee

CC: BCAFN Chiefs Assembly.  
UBCIC Chiefs Council.  
Renee Mounteney, ADM, Policy and Legislation Division, Ministry of Finance.



## BC ASSEMBLY OF FIRST NATIONS

1004 Landooz Road  
Prince George, BC V2K 5S3  
Website: www.bcafn.ca

**BCAFN 17<sup>th</sup> ANNUAL SPECIAL CHIEFS MEETING**  
**March 3 & 4, 2021**  
**Online via Zoom**

**Resolution 17/2021**

**SUBJECT: PROPERTY TRANSFER TAX EXEMPTION FOR FIRST NATIONS ENTITIES IN BRITISH COLUMBIA**

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**Moved BY: CHRIS LEWIS, PROXY, SQUAMISH NATION**

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**SECONDED BY: CHIEF DONNA ALJAM, NICOMEN INDIAN BAND**

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**DECISION: CARRIED**

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### WHEREAS:

- A. The *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, together with the Province of British Columbia (the "Province") through the Declaration on the Rights of Indigenous Peoples Act, committed to implement, affirms:

#### Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent.

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**Certified copy of a resolution adopted on the 4<sup>th</sup> day of March 2021**

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**Terry Teegee, BC Regional Chief**

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration;

- B. First Nations are engaged in a consultation process with the Province regarding the impacts on their aboriginal title and rights which would result from the disposal of certain Provincial Crown lands that are considered to be surplus to the needs of the Crown agencies or corporations involved;
- C. A number of First Nations who are engaged in the consultation process have been negotiating the transfer of certain of those Provincial Crown lands to entities such as corporations or limited partnerships, the majority of whose shares or partnership units are beneficially owned by the First Nations ("First Nation Entities") given that Provincial legislation precludes most First Nations in the Province from owning land in fee simple directly;
- D. The Province is currently charging the Property Transfer Tax ("PTT") pursuant to the *Property Transfer Tax Act* (the "PTTA") to First Nations and First Nations Entities and is taking the position that PTT will be payable by First Nations and the First Nation Entities on

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**Certified copy of a resolution adopted on the 4<sup>th</sup> day of March 2021**



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**Terry Teegee, BC Regional Chief**

all future transfers of fee simple land, including subdivisions of fee simple land, despite the fact that the majority beneficial ownership of those lands rests with the First Nations;

- E. It is the position of First Nations in the Province that the First Nation Entities, as the instrument of First Nation governments, should be exempt from paying PTT in accordance with the spirit of the Province's Declaration on the Right of Indigenous Peoples Act and the honour of the Crown. This is especially so given that lesser forms of government such as municipalities, regional districts, improvement districts, regional hospital districts, library boards and boards of school trustees have been granted this exemption pursuant to subsection 37(2)(b) of the PTTA;
- F. The imposition of PTT on First Nations and First Nation Entities have, and will continue to have, a negative impact on the accommodation offered to First Nations by the Province and, in certain scenarios, the total cost of PTT paid to the Province by First Nation Entities will be significantly more than the economic accommodation received by those First Nations; and
- G. The Province currently takes the position that it will not negotiate a resolution of the PTT issue with First Nations on an individual basis, but rather takes the position that it must be resolved on a Province-wide basis for the benefit of all First Nations in the Province.

**THEREFORE BE IT RESOLVED THAT:**

- 1. The BCAFN Chiefs-in-Assembly call upon the Province of British Columbia to make immediate amendments to the PTTA and/or its regulations that include an exemption for First Nations and First Nation Entities, and that PTTA Amendments be included in the DRIPA Action Plan;
- 2. The BCAFN Chiefs-in-Assembly fully support the Regional Chief and First Nations Leadership Council to advocate on this issue with the Province of British Columbia; and
- 3. The BCAFN Chiefs-in-Assembly fully support the Regional Chief and First Nations Leadership Council to support First Nations in direct negotiation with the Province of British Columbia on this issue.

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**Certified copy of a resolution adopted on the 4<sup>th</sup> day of March 2021**



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**Terry Teegee, BC Regional Chief**

# OUR LAND IS OUR FUTURE

## UNION OF BRITISH COLUMBIA INDIAN CHIEFS

FOUNDING HEAD OFFICE  
209 - 345 Chief Alex Thomas Way  
Kamloops, B.C. V2H 1H1  
Tel: 250-828-9746  
Fax: 250-828-0319



VANCOUVER OFFICE  
401 - 312 Main Street  
Vancouver, B.C. V6A 2T2  
Tel: 604-684-0231  
Fax: 604-684-5726  
1-800-793-9701  
Email: [ubcic@ubcic.bc.ca](mailto:ubcic@ubcic.bc.ca)  
Web: [www.ubcic.bc.ca](http://www.ubcic.bc.ca)

### UNION OF B.C. INDIAN CHIEFS CHIEFS COUNCIL FEBRUARY 24<sup>TH</sup>-25<sup>TH</sup>, 2021 VIRTUAL MEETING

#### Resolution no. 2021-24

#### RE: Property Transfer Tax Exemption for First Nations in British Columbia

**WHEREAS** the Province of B.C. currently charges First Nations property transfer tax (PTT) on lands to be transferred to First Nations, despite the reality that the land being transferred to First Nations in B.C. by the Province was unceded in the first place;

**WHEREAS** First Nations are recognized governments that should be exempt from PTT under Section 37(2)(b) of the *Property Transfer Tax Act* just as other government entities like municipalities, regional districts, and school boards are;

**WHEREAS** First Nations consider the Province's position on First Nations PTT exemption unjust and unfair due to the exempt status of other governments;

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., committed to implement, affirms:

**Article 28(1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent;

**(2):** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 32(1):** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources;

**(2)** States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval

of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources;

(3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Article 38:** States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration;

**WHEREAS** some First Nations are engaged in a consultation process with the Province regarding the impacts of the potential sale of certain provincially owned lands on their respective Title and Rights and have been discussing with the Province the transfer of lands to First Nations owned entities as accommodation for these impacts;

**WHEREAS** these First Nations entities (such as corporations or limited partnerships) shares or partnership units are typically majority and beneficially owned by the First Nations;

**WHEREAS** It is the position of First Nations in the Province that First Nation entities, as the instrument of First Nation governments, should be exempt from paying PTT in accordance with the spirit of the Province's *Declaration on the Right of Indigenous Peoples Act* and the honour of the Crown;

**WHEREAS** lesser forms of government such as municipalities, regional districts, improvement districts, regional hospital districts, library boards and boards of school trustees have been granted PTT exemption pursuant to subsection 37(2)(b) of the *Property Transfer Tax Act*;

**WHEREAS** the imposition of PTT on First Nations negatively impacts the accommodations offered to First Nations by the Province and, in certain scenarios, the PTT paid to the Province by First Nations entities will completely dissolve the economic accommodation received by First Nations;

**WHEREAS** the Province takes the position that it will not attempt to resolve the PTT issue with First Nations on an individual basis and will only attempt to resolve the PTT issue on a province-wide basis for the benefit of all First Nations in B.C.;

**WHEREAS** Indigenous peoples in British Columbia have Indigenous Governing Bodies which should be granted exemptions to PTT similar to other government entities; and

**WHEREAS**, in November 2019, the Province passed the *Declaration on the Rights of Indigenous Peoples Act* ("Declaration Act") which requires that "In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration."

**THEREFORE BE IT RESOLVED** that UBCIC Chiefs Council supports amendments to the *Property Transfer Tax Act* and/or its regulations to include an exemption for First Nations and First Nation Entities be made immediately;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs Council calls on the UBCIC Executive, working with the BC Assembly of First Nations and First Nations Summit as the First Nations Leadership Council, to support First Nations in direct negotiations with the Province of British Columbia on this issue; and

**THEREFORE BE IT FINALLY RESOLVED** the UBCIC Chiefs Council directs the UBCIC Executive, working with the BC Assembly of First Nations and the First Nations Summit as the First Nations

Leadership Council, to immediately advocate for property transfer tax (PTT) exemptions for First Nations and First Nations Entities in BC, and lobby the Province to amend the *Property Transfer Tax Act* to include an exemption for First Nation governments and entities based on the UN Declaration and principles of reconciliation, as part of the alignment of laws that the Province must do to be compliant with the *Declaration Act*.

**Moved:** Spokesperson & Councillor Khelsilem (Dustin Rivers), Squamish Nation

**Seconded:** Kukpi7 Willie Sellars, Williams Lake First Nation

**Disposition:** Carried

**1 Abstention:** Chief Byron Louis, Okanagan Indian Band

**Date:** February 25, 2021