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Disclaimer

The Aboriginal Resource Tax (ART) is a proposal led by First Nations to formally tax resource and resource infrastructure projects and expansions taking place on their (traditional) territories.¹ The ART would replace the present practice of negotiating unique financial arrangements every time a project infringes on First Nations title or potentially a Treaty right. The First Nations championing this proposal have requested the support of the First Nation Tax Commission (FNTC). This paper summarizes the rationale and concept for ART. It has been prepared for the review of the FNTC and proponent First Nations. It is being shared in this forum for discussion purposes.

Overview

The ART is being proposed, in part, to help First Nations address their infrastructure deficit, which is far more acute than in the rest of Canada.² However, the ART also serves broader goals such as defining and implementing Treaty and title rights, improving the investment process in Canada, and shifting the approach for resolving First Nation disparities from program driven to economic driven approaches.

The original impetus for the ART was the specific challenges and opportunities that recent





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Figure 1. Fixed Capital Investment (share by government)

The challenges and unpleasant fiscal choices facing provincial governments can, as was already noted, be ameliorated by some combination of greater federal contributions to the cost of provincial services or productivity improvements. Productivity improvements would cause government revenues to grow faster than forecast and this would create the additional fiscal room needed to fund infrastructure without either tax increases or cuts to



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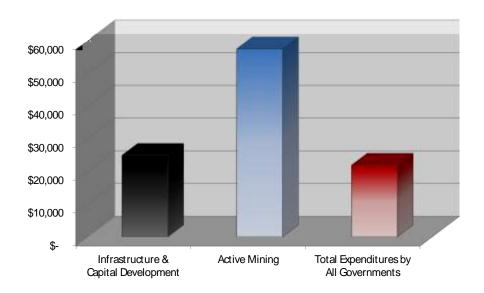
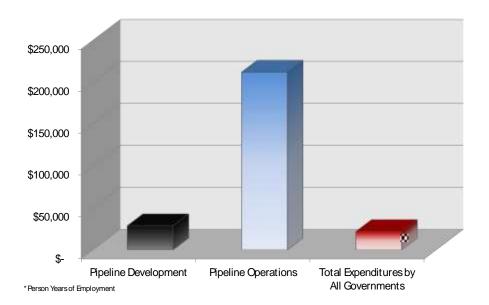


Figure 2. The figure illustrates the average net revenue produced per worker by an average mine during its development and then operations phases.

Figure 3. The figure shows the average net fiscal contribution per worker of a pipeline project during its construction and then operating phase.





2. First Nations need a fiscal stake in resource investment

The demonstration above showed how a resource strategy would contribute to a Canadian productivity strategy. However, by some accounts, Canada is getting a poor reputation as a



Figure 4. Taxes collected over the life of a typical mine

In fact, not only will the First Nation not receive any of the direct revenues, it will also not typically receive any of the indirect fiscal benefits generated by these revenues. For example, it is unlikely to enjoy increased programming or transfers from other governments.

it does not share indirectly is that the provincial position ¹¹ to First Nation persons on reserve are a federal responsibility.

First Nation persons on reserve are therefore specifically excluded from sharing the, now enhanced, provincial services. The only benefit received by these people as a result of the new provincial revenues would be through enhancements to generally available provincial services, such as highways.

The federal part of the reason is that the federal government does not typically link its

territory. Instead, they have implemented what First Nation leaders cent per annum growth rate. The growth of the transfer is not keeping pace with population growth and inflation. T 85Tm2 Tmi2r.B TJand v(e)4(r)}njoy



projected growth of federal transfers to provincial governments as specified in recent medium term federal fiscal plans.

The bottom line is that, when there is no royalty sharing, new resource projects on their territory actually contribute to a widening of service and infrastructure disparities. So long as this phenomenon persists, it is going to be difficult to secure First Nations support for projects.

This will be termed th

3. The limitations of royalty sharing

fiscal

issue identified above. It is a convention whereby a provincial government will agree to share the relevant royalties generated by a resource project with the First Nation upon whose territory it takes place. Sharing is typically implemented according a formula specified in an agreement. In some cases, revenue sharing is packaged with a complementary approach whereby a First Nation will secure revenues directly from the company that is proposing the project. This complementary approach is implemented .¹² Revenue agreements are the subject of the next section. through,

Revenue sharing and revenue agreements



federal government over the long term as was already noted. Hence agreements with provincial governments may be less secure in the future. Provinces will be looking for savings as their fiscal challenges increase. Revenues diverted to First Nations may be a logical target, particularly given their position that First Nations are primarily a federal responsibility.

vii) If royalty sharing becomes widespread, it will create moral hazard for provincial

holidays relative to other investment inducements. The reason is that much of the fiscal cost of the former will be borne by the First Nations with whom they are sharing revenues whereas, the cost of other inducements will be borne entirely by the province in question.

4. The limitations of revenue agreements

In addition to revenue sharing with provinces, many First Nations strike agreements with companies under which they receive direct financial payments. These payments can take many forms such as signing bonuses, milestone payments, lump sum payments and different formula based approaches. Regardless, they will all be lumped together under the

Revenue agreements all constitute a form - because they have many of the attributes of taxation without being formally recognized as such. For example, they are collected by a government for the general purpose of its community. Payments are not linked to the provision of any specific good or service, as would be the case with a market exchange.

First Nations engage in pseudo-taxation because they need the revenues but do not have formal tax powers. However, while pseudo-taxation r9 f ised spoues bmhav1ETBT1 0 0 1 416.03 710.97 Te



ii) The negotiations that produce r



amplified and it will be possible to develop an internally consistent and seamless national approach to First Nations participation in resource projects.

3. The ART would improve the investment facilitation process



The Current Process

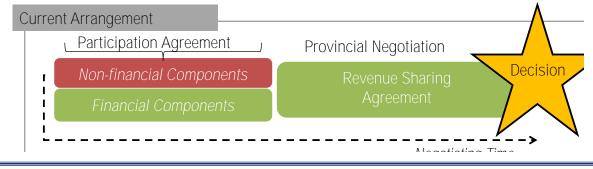
The BC process is a two stage negotiation. Financial arrangements must be concluded with the company proponent (along with other issues), and only if this is successfully completed, are negotiations then conducted with the provincial government. Figure 5 illustrates the process.

The figure shows that the company negotiation encompasses both financial and nonfinancial issues and these issues are entwined. Non-financial components typically include a negotiation about how to address impacts on the environment and traditional way of life. Other non-financial issues might include preferential job placement for Members, access to contracting opportunities for Members and Band owned entities, or mechanisms for dispute resolution and ongoing participation by the First Nation in the management of the project.

Only when this stage is complete, does negotiation with the Province begin. The negotiation with the Province also mixes purely financial issues with non-financial issues. The financial issues are typically about the nature of a royalty sharing agreement.

The bottom line is that it can take a considerable amount of time to get to final approval.

The timeline of a typical agreement under the revenue sharing approach to Aboriginal title.





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b. Reduces the administrative burden on First Nations

First Nation administrations are relatively small and overburdened.¹ This is making it difficult for them to expedite consent decisions because these projects are often very complex. The ART would replace the need to negotiate and then manage multiple agreements with an automatic pre-specified tax and a single tax administration.

c. Reduces the cost and complexity of negotiations

A principal goal of the ART is to reduce the complexity of consent negotiations with First Nations. The ART would do this by removing the need to negotiate major financial aspects from both stages of the negotiation. It would mean the financial aspects of a deal could be separated from the other aspects and further simplify the negotiation.

d. Creates greater transparency

Companies considering major investments would prefer to understand their likely tax burden at the beginning of the process. This type of transparency is not possible so long as the practice of negotiating unique pseudo-taxation arrangements persists.

4. Politically reliable revenues for First Nations

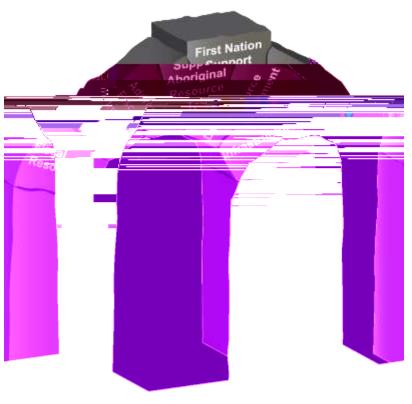
Revenue sharing is based on a First Nation sharing of a tax stream that is still controlled by a provincial government. The province in question will be solely responsible for setting tax rates, establishing the tax base and all the other parameters that collectively determine the revenue potential of the tax in question. They will likely make changes in these policies without reference to their impact on First Nation revenues. This creates revenue uncertainty for the First Nation.

5. Economically reliable revenues for First Nations.

Royalties are one of the most volatile tax sources. They work essentially as a profit tax and profits are more volatile than other tax bases such as income and sales tax. First Nations have relatively small and undiversified revenue bases and are less able to bear such volatility. The ART would allow First Nations to design a more stable and suitable tax out of vacated tax room.



would provide many First Nations with a relatively simple way to share revenues whenever a new project or expansion takes place on their territory. (c) It would remove the need for complex negotiations about these matters with both companies and provinces. (d) It would reduce the need for a First Nation to manage an ever growing portfolio of unique agreements. (e) It would reduce the opacity created by the fact that fiscal arrangements are not currently pre-specified. (e) It would allow a fiscal solution to be applied to projects that do not directly generate royalties. (f) It would allow First Nations to design a tax that is more reliable than current arrangements and better suited to their status as small and financially undiversified governments. (g) It would open the door for the federal government to share the costs of the fiscal accommodation which would better address provincial issues and apprehensions that are currently inhibiting solutions. (h) It would create a useful revenue stream for the financing of First Nations infrastructure



improvements.

The key to making the ART would be: (a) the creation of revenue room by other governments and a federalprovincial agreement to this effect; (b) institutional support for the implementation of the ART by participating First Nations; and, (c) institutional support for the fiscal coordination of the new tax within Canadian fiscal arrangements.

Figure 5. Creating a fiscal stake for First Nations in resource projects on their

territory is a key to solving Canada's productivity challenge.



Recommendations

The ART should be developed along two tracks: (a) The FNTC should work SSN and other

implementation in BC. The ART would be developed as a formal tax and an alternative to royalty sharing. Part of the ART regime would also be made applicable to projects that do not generate direct royalties.



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The Federal Track

A paper should be developed for presentation to provincial and federal governments about the desirability of a federal component to creating tax room for the ART.

The paper would emphasize the importance of federal participation in providing assurances that the development of the ART from provincial tax room will not worsen the fiscal imbalance.

It should emphasize the importance of the ART in meeting federal obligations such as First Nations infrastructure.

It should emphasize the importance of federal participation in ensuring a national transportation infrastructure.

Federal participation would ensure that the federal government does not profit from pseudo-taxation through offsets and, in fact, creates tax room to eliminate this practice.

Federal participation should go beyond creating tax room. Federal participation could also help ensure a fair fiscal treatment among provinces and among First Nations in different provinces. There are three important elements torees



Mining Revenues Methodology

government revenue impacts for this study.

Where the technical and feasibility estimates could not accurately model government revenues, economic impact ratios are used. The economic impact multipliers are based on *Economic Impact Analysis* for government

revenues. Economic multipliers for direct and indirect effects of the mining industry were calculated. Multipliers were also further broken down between capital and operating expenditures.

Outward transportation, exploration and development, environmental control, and public interest and other expenditure multipliers are not included in the calculations of government revenue impacts.

Corporate Income Tax

Provincial corporate income tax impacts from the mine are calculated using the provincial revenue multipliers. A provincial revenue impact is first calculated, and then broken down between corporate, income, and sales taxes. Based on Government of British Columbia 2011 Estimates, it was calculated that corporate income represents 12 per cent of the sum of the three taxes.

It was assumed that there would be no direct corporate income tax paid by the mine until after cumulative cash flow (running sum of all operating costs, capital costs, and revenues) was positive. Indirect corporate income tax from other businesses in the region was assumed to be positive from the beginning of construction.

Personal Income Tax

Direct personal income tax was modeled using employment numbers from a typical mineral

Technical Report and Feasibility Study. Direct Employment was broken down into two groups, mine employees, and construction employees.

rocess plant manpower requirements and general and administration staff were found in the Technical Report and Feasibility Study. Wages for construction employees were based on a 2009 BC survey of wages under National Occupations



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Classifications; 1) trades, 2) transport & equipment operators and 3) related occupations. These wages were inflated to 2012 dollars.

Indirect employment numbers were calculated using economic multiplier ratios for mine employment. Wages are assumed to be the average of mine or construction employees.

Provincial personal income tax was modeled using 2011 tax rates. It was assumed that non-taxable deductions from income would equal 5 per cent of total income. Personal income tax per employee was assumed to increase by 2.5 per cent per year.

Sales Tax

Provincial sales tax impacts from the mine are calculated using the provincial revenue multipliers. A provincial revenue impact is first calculated, and then is broken down between corporate, income and sales taxes. Based on Government of British Columbia Estimates, it was calculated that sales tax represents 44 per cent of the sum of the three taxes.

Mineral Tax

The mineral tax estimate was made using provincial mineral tax rates and extensive use of cash flow estimates. The provincial mineral tax is a two part tax, including a Net Current Proceeds Tax and a Net Revenues Tax. A Net Current Proceeds Tax of 2 per cent was applied to cash flow



Aboriginal Resource Tax - Closing the Infrastructure Gap

Closing the Institutional Gap - The Role of the First Nations Tax Commission (FNTC



It is beyond the scope of this paper to discuss all the components of the FNTC and First Nation taxation institutional and regulatory fram t



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The FNTC supports the process of continuous improvement by supporting infrastructure development and financing. The FNTC is working to increase First Nation revenue options and then provide a framework that supports long term financing and the development of whole infrastructure systems where revenues are set aside to maintain the stock of infrastructure. It is with this in mind, that the FNTC requires infrastructure plans to be integrated with medium term fiscal plans. The FNTC also encourages First Nations to use the full range of infrastructure options that includes borrowing, development cost charges, local improvement taxes, property taxes, business activity taxes and joint development with adjacent communities using comprehensive service agreements.

