

**Regulations Amending the Property Assessment and Taxation (Railway Right-of-Way)  
Regulations: SOR/2018-237**

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INDIAN ACT

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Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to subsection 83(5)<sup>a</sup> of the *Indian Act*<sup>b</sup>, makes the annexed *Regulations Amending the Property Assessment and Taxation (Railway Right-of-Way) Regulations*.

**Regulations Amending the Property Assessment and Taxation (Railway Right-of-Way)  
Regulations**

**Amendments**

**1 The definitions *adjustment factor* and *provincial taxation laws* in section 1 of the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*<sup>1</sup> are replaced by the following:**

- ***adjustment factor*** means the adjustment factor set out in the *Railway Corporations Assessment Regulation*, B.C. Reg. 51/2016, as amended from time to time. (*facteur de rajustement*)
- ***provincial taxation laws*** means the laws and regulations of British Columbia respecting property taxation, including the *Assessment Act*, *Railway Corporations Assessment Regulation*, *Hospital District Act*, *School Act*, *Local Government Act* and *Taxation (Rural Area) Act*, as amended from time to time. (*lois fiscales provinciales*)

**2 Subsection 5(4) of the Regulations is replaced by the following:**

**Adjustment factors**

**(4)** For the purposes of subsection (1), the adjustment factors applicable to the determination of tax rates for the Boothroyd Indian Band, Nicomen Indian Band, Siska Indian Band and Skuppah Indian Band shall be the adjustment factors that apply to property in incorporated areas.

**3 Items 2 and 2.2 of Schedule 1 to the Regulations are repealed.**

**4 Items 2 and 2.2 of Schedule 2 to the Regulations are repealed.**

### **Coming into Force**

**5 These Regulations come into force on the day on which they are registered.**

## **REGULATORY IMPACT ANALYSIS STATEMENT**

*(This statement is not part of the regulations.)*

### **Issues**

First Nations in Canada can levy property taxes from the Canadian Pacific Railway on railway rights-of-way running through their reserves pursuant to either the *Indian Act* or the *First Nations Fiscal Management Act*, and in accordance with related regulations made under each legislative framework. This taxation takes place under the *Indian Act* only until such time that a First Nation is added to the schedule to the *First Nations Fiscal Management Act*.

On July 26, 2016, Cook's Ferry (formerly known as Cook's Ferry Indian Band) requested to be added to the schedule of the *First Nations Fiscal Management Act*, followed by Little Shuswap Lake Indian Band on November 28, 2016. As part of the move for both First Nations, located in British Columbia, to tax the Canadian Pacific Railway rights-of-way lands on their reserves under the authority of the *First Nations Fiscal Management Act*, they must be removed from the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act*, and be added to the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*.

In addition, a technical amendment is required to the definition sections of the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act*, and the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*, to ensure consistency with a provincial regulation referenced in these regulations that was repealed and replaced with *Railway Corporations Assessment Regulation*, B.C. Reg. 51/2016.

### **Background**

Until 2006, First Nations that were levying property taxes on railway rights-of-way did so in accordance with the *Property Assessment and Taxation (Railway Right-of-Way) Regulations* pursuant to the authorities of the *Indian Act*. In 2006, the *First Nations Fiscal Management Act* was enacted providing First Nations with an option to design a modern on-

reserve taxation system that closely resembles that of off-reserve local governments. First Nations may access the *First Nations Fiscal Management Act* by requesting to be added to the schedule by way of a band council resolution to the Minister of Indian Affairs and Northern Development, also known as opting in. First Nations who opt in to the regime established under the *First Nations Fiscal Management Act* are better positioned for overall economic growth and to capitalize on solid business relationships, resulting in a better quality of life for community members.

In 2007, the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations* (SOR/2007-277) were made under the *First Nations Fiscal Management Act*. These Regulations provide the ability to levy taxation on reserve at levels comparable to those off-reserve in a timely manner. This fosters harmony between taxation by First Nations and taxation by provincial or municipal authorities, thereby ensuring compliance with the principles of equity and fairness.

In 2016, the schedule to the *First Nations Fiscal Management Act* was amended to include Cook's Ferry and Little Shuswap Lake Indian Band. In order to complete the changes in authority, Cook's Ferry Indian Band and Little Shuswap Lake Indian Band must be removed from the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act* and added to the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*.

A technical amendment to the definitions "adjustment factor" and "provincial taxation law" is also required in both regulations as they make reference to the provincial *Adjustment Factors Relating to the Valuation of Railway Corporation Property Regulation*, B.C. Reg. 324/96 which has since been replaced by a new provincial Regulation, the *Railway Corporations Assessment Regulation*, B.C. Reg. 51/2016.

## Objectives

The objectives of the amendments are to

- remove Cook's Ferry Indian Band and Little Shuswap Lake Indian Band from the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act*,
- add Cook's Ferry and Little Shuswap Lake Indian Band to the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*; and
- amend the definitions "adjustment factor" and "provincial taxation law" in both the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act*, and the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*, for accuracy in the reference to a provincial regulation.

## Description

The following amendments will facilitate Cook's Ferry and Little Shuswap Lake Indian Band in levying property taxes on railway rights-of-way running through their respective reserves pursuant to the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, made under the *First Nations Fiscal Management Act*.

***Regulations Amending the Property Assessment and Taxation (Railway Right-of-Way) Regulations, under the Indian Act***

- Schedule 1, items 2 and 2.2 — remove the land description of the right-of-way areas.
- Schedule 2, items 2 and 2.2 — remove the tax base for adjacent areas used to determine the tax rates for properties in the right-of-way areas.
- Subsection 5(4) (applicable adjustment factors to the determination of tax rates that apply to property in incorporated areas) — remove the references to Cook's Ferry Indian Band and Little Shuswap Lake Indian Band.

***Regulations Amending the First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations, under the First Nations Fiscal Management Act***

- Schedule 1 — add the relevant land description of the right-of-way areas for Cook's Ferry and Little Shuswap Lake Indian Band.
- Schedule 2 — add the relevant tax base for the adjacent areas used to determine the tax rates for properties in the right-of-way areas for Cook's Ferry and Little Shuswap Lake Indian Band.
- Paragraph 4(4)(a) (applicable adjustment factors for the maximum tax rates for railway rights-of-way) — include Cook's Ferry and Little Shuswap Lake Indian Band.

The following amendment to the definition sections of the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, under the *Indian Act*, and the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations*, under the *First Nations Fiscal Management Act*, ensures consistency with a provincially referenced regulation:

- Section 1 — replace references to the *Adjustment Factors Relating to the Valuation of Railway Corporation Property Regulation*, B.C. Reg. 324/96 with references to *Railway Corporations Assessment Regulation*, B.C. Reg. 51/2016 in the definitions of "adjustment factor" and "provincial taxation laws."

**"One-for-One" Rule**

The "One-for-One" Rule does not apply to these amendments, as they do not result in any administrative costs to businesses.

## **Small business lens**

The small business lens does not apply to these amendments, as there are no costs to small business.

## **Consultation**

Due to the technical nature of these amendments, it is expected that there will be no practical change in the taxation of the railway rights-of-way. In March 2017, the Canadian Pacific Railway was informed of the amendments, at which time they indicated having no concerns. The First Nations Tax Commission has also expressed support for the amendments by email to the Department, formerly known as Indigenous and Northern Affairs Canada. As a result, no consultation is necessary, as these changes are a follow-up to Cook's Ferry and Little Shuswap Indian Band's choice to participate in the *First Nations Fiscal Management Act* taxation regime. However, in June 2018, both First Nations were notified in writing that they would be added to the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations* in 2018.

## **Rationale**

To date, Cook's Ferry and Little Shuswap Lake Indian Band have been administering property taxation using the *Property Assessment and Taxation (Railway Right-of-Way) Regulations*, made under the *Indian Act*. As both First Nations have been added to the *First Nations Fiscal Management Act*, it is a necessary step to remove them from the *Property Assessment and Taxation (Railway Right-of-Way) Regulations* schedules, as they will no longer administer property taxation under this regulatory framework. In addition, it is a necessary step to add them to the schedules of the *First Nations Property Assessment and Taxation (Railway Rights-of-Way) Regulations* to complete the transfer to the new taxation regime.

As required by the Cabinet Directive on the Federal Approach to Modern Treaty Implementation, an assessment of modern treaty implications was conducted on this proposal. The assessment did not identify any modern treaty implications or obligations, as the proposal is outside of the geographic and subject matter scope of modern treaties.

A Strategic Environmental Assessment initial checklist was conducted as per the 2010 *Cabinet Directive on Environmental Assessment of Policy, Plan and Program Proposal*. It was determined that neither a preliminary scan nor a detailed analysis is required as these regulatory amendments finalize the legalities required to formalize the taxation authorities of the First Nations under the *First Nations Fiscal Management Act*.

## **Implementation, enforcement and service standards**

The amendments facilitate the continuation of Cook's Ferry's and Little Shuswap Lake Indian Band's exercise of authority to tax the Canadian Pacific Railway on the identified railway rights-of-way lands. The current taxation by-laws that the First Nations have in place remain in force until they are repealed or replaced by a law made under section 5 of the *First Nations Fiscal Management Act*.

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## Footnotes

[a](#)

R.S., c. 17 (4th Supp.), s. 10(3)

[b](#)

R.S., c. I-5

[1](#)

SOR/2001-493