

Special Report, Part 3: Proceedings of a Policy Conference on Aboriginal Tax, Treaties, and Self-Government

The following papers by W. Graham Allen and Tom Falconer constitute the third and final part of the Canadian Tax Foundation's publication of a selection of the proceedings of a policy conference on aboriginal tax, treaties, and self-government, which was held in Saskatoon on May 31-June 1, 2000.

The opening address set the stage for this conference, which focused on the multifaceted approach needed to address the tax and economic issues facing not only First Nations and aboriginal people in their quest for independence but also the Canadian people. In his introductory speech, George Lafond, Tribal Vice-Chief, Saskatoon Tribal Council, encouraged the preservation of cultural heritage for all First Nations peoples in self-government agreements but he also stressed that First Nations, in realizing tax and economic autonomy, must also adopt a more extroverted approach in dealing with and benefiting from the globalization of the world economy.

The first part of the conference established the framework upon which later discussions were based. The juridical tenets of Indian taxation were reviewed in the context of recent judicial decisions considering the taxation of employment and investment income. The discussion reflected the diversity of opinion regarding the appropriate interaction between the long-established "connecting factors test," the Indian Act, and the Income Tax Act and their collective impact on Indian tax liability.

Given this backdrop, the discussion then turned from the theoretical underpinnings of taxation to its practical application with a review of viable business structures in resource development, giving consideration to the impact of potential tax and non-tax issues such as regulatory matters, land claims settlements, and legal liability.

Attention was then given to self-government initiatives across the country, ranging from federal government reports and commissions on aboriginal autonomy to actual realization of tax and economic independence embodied by the Indian Tax Advisory Board and the Saskatchewan Treaty Governance Process, which sets the framework for self-governance for Saskatchewan First Nations bands.

Following the discussions that were centred primarily on the treaty rights of First Nations, a shift in perspective was required when consideration was given

to the rights of non-aboriginal peoples living on reserves. Governance, representation, and discrimination issues were discussed in the context of property assessments, tax rates, and local expenditures, using the Musqueam reserve as the residential background.

With the realization that self-government initiatives are not unrelated events, attention turned to specific agreements across the country. Factors crucial to the success (Nisga'a, Innu, Attikamek, and Mohawk) or the demise (Sechelt) of agreements illustrated that the treaty negotiation process was a lengthy and complex national undertaking requiring the commitment of municipal, provincial, and federal governments as well as First Nations participants.

The conference finally considered the future of the First Nations and aboriginal self-government process through a multipronged approach framed from preceding discussions, distinguishing between aboriginal and treaty rights and their operation in the context of natural resource transfer agreements and in light of the seminal *Delgamuukw* and *Marshall* decisions.

A selection of the papers presented at the conference has been published over several issues of the *Canadian Tax Journal*. In this issue, the third and final part of the special report of the proceedings deals with taxation aspects of the Sechelt agreement-in-principle and fiscal aspects of the Nisga'a final agreement.