

Discussion Paper NEW FISCAL FRAMEWORK



PURPOSE

The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was unanimously passed by the British Columbia Legislative Assembly in November 2019. This made B.C. the first jurisdiction in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).

Section 4 of the Declaration Act requires the Province of British Columbia to prepare and implement an action plan, in consultation and co-operation with Indigenous Peoples, to achieve the objectives of the UN Declaration. On March 30, 2022, the Declaration Act Action Plan (Action Plan) was released after a process of consultation and co-operation with Indigenous Peoples.

Actions 1.4 and 1.5 of the Action Plan state:

- “Co-develop with Indigenous Peoples a new distinctions-based fiscal relationship and framework that supports the operation of Indigenous governments, whether through modern treaties, self-government agreements or advancing the right to self-government through other mechanisms. This work will include collaboration with the Government of Canada. (Ministry of Finance, Ministry of Indigenous Relations and Reconciliation)”
- “Co-develop and implement new distinctions-based policy frameworks for resource revenue-sharing and other fiscal mechanisms with Indigenous Peoples. (Ministry of Finance, Ministry of Indigenous Relations and Reconciliation)”

This new fiscal framework must be based on the recognition and co-operative implementation of Indigenous rights and consistent with the standards of the UN Declaration.

Actions 1.4 and 1.5 of the Action Plan reflect earlier commitments made by the Province and First Nations. The development of a renewed fiscal relationship was committed to in the 2018 *Joint Agenda: Implementing the Commitment Document (Concrete Actions)*. Action 3, Goal 2 commits to the joint design and implementation of new approaches and models of renewed fiscal relations “to support the co-existence and exercise of our respective jurisdictions and the sharing and distribution of revenues”.

DISTINCTIONS-BASED APPROACH:

The Province is committed to a distinctions-based approach. This requires that the Province's dealings with First Nations, Métis and Inuit Peoples be conducted in a manner that acknowledges the specific rights, interests, priorities and concerns of each, while respecting and acknowledging these distinct Peoples with unique cultures, histories, rights, laws and governments. Section 35 of the *Constitution Act, 1982*, recognizes and affirms the rights of Aboriginal Peoples of Canada, while all Indigenous Peoples have human rights that are expressed in the UN Declaration. However, not all rights are uniform or the same among or between all Indigenous Peoples. In many cases, a distinctions-based approach may require that the Province's relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.

As an early step towards a new fiscal framework, the Province committed to, and finalized, a long-term gaming revenue sharing arrangement that, since 2019, has redistributed approximately \$100 million annually in provincial gaming revenues to First Nations in B.C.

This Discussion Paper supports consultation and co-operation between First Nations and the Province in the development of a new fiscal relationship and framework that will fulfill Actions 1.4 and 1.5 of the Action Plan.

This paper is in three parts.

Part 1: Context – Identifies background and context that sets out what a fiscal framework is and informs why a new fiscal framework with First Nations is needed

Part 2: Approach – Identifies preliminary concepts and principles to inform an approach to a new fiscal framework

Part 3: Process – Identifies preliminary elements of the process of consultation and co-operation to support development of a new fiscal framework

Important Acknowledgement: This is a provincial paper addressed to First Nations with the intent of supporting the co-development of a new fiscal relationship and framework as committed to in the Action Plan. It is hoped that this paper is a helpful contribution to our future government-to-government engagements as we continue building a new fiscal framework.

PART 1 – CONTEXT

Economic and Fiscal Dimensions of First Nation Rights

It is well established that First Nations rights include economic rights, and that reconciliation must include principled and revitalized economic and fiscal relationships between Indigenous and Crown governments. As the Supreme Court of Canada has affirmed, Aboriginal title has an “inescapable economic component”.¹ The UN Declaration includes the rights of Indigenous Peoples: to self-determination and self-government; to maintain their economic structures and systems; to freely engage in economic activities; to economic development; to own, use and develop their lands and resources; and, to redress and compensation.

At the foundation of this recognition of the economic and fiscal dimensions of First Nations rights in domestic and international law is the historic and enduring reality of the relationship of First Nations in British Columbia to the lands and resources of their territories and the governance and jurisdiction of First Nations governments. For countless generations, First Nations governed the lands and resources of their territories through their own legal orders and institutions and built economies that allowed their peoples and societies to thrive and establish patterns of individual and collective well-being.

As acknowledged in the Action Plan, colonization and the associated attempted genocide of Indigenous Peoples fractured the self-determined lives, cultures and well-being of Indigenous Peoples across Canada. The effects of this remain real and destructive today and are seen in the realities faced by Indigenous Peoples across the socio-economic spectrum including poverty, housing and lack of access to adequate health and support services.

Part of addressing this colonial legacy is to establish proper, principled and revitalized fiscal relations between First Nations and Crown governments based on the recognition and co-operative implementation of *Constitution Act, 1982* section 35 rights, including title and the standards of the UN Declaration. Such a rights-based fiscal framework will help ensure First Nations’ economies thrive and First Nations governments have access to the revenues they need to fulfil their roles and responsibilities to care for their citizens and manage their territories in ways that reflect First Nations worldviews and values.

1 Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010

The fiscal relationship between First Nations and Crown governments must also be responsive to changes in the provincial economy and support emerging opportunities for First Nations leadership in areas such as energy security and transformation, mining and critical minerals, conservation, and tourism. StrongerBC, the Province's economic plan, is focused on enabling inclusive and clean growth in a way that is flexible and open to new economic opportunities, based on an economy that respects, acknowledges and upholds section 35 rights. This transformative economic vision creates the space to consider fundamental questions about how value is created and measured and how economic health can be understood in a way that is inclusive of the connections between lands, resources, people and Nations.

Establishing such economic and fiscal relations is not new work. For many years First Nations and Crown governments have been working towards a just and principled economic relationship. This has included the use of many tools and mechanisms, including resource revenue sharing, taxation, First Nations fiscal institutions, accommodation measures and agreements and fiscal transfer and support arrangements.

While change and progress has occurred, it is recognized by all parties that substantive work and change is still needed.

In 2014, in response to the Tsilhqot'in Nation decision of the Supreme Court of Canada, First Nations in B.C. collectively developed the "Four Principles", which includes Principle 4: "We immediately must move to consent-based decision-making and Title based fiscal relations, including revenue sharing, in our relationships, negotiations and agreements." The Province has also recognized the need for a principled approach to economic and fiscal relations in its *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*. Principle 8 states:

"The Province of British Columbia recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with the federal government and Indigenous nations that promotes a mutually supportive climate for economic partnership and resource development."

In the *Commitment Document*, 2018 First Nations and the Province agreed to the following goal

“Goal 2: Strengthening the Economy and Renewed Fiscal Relationship: The Commitment Document identifies a key theme of strengthening the economy. A new government-to-government relationship requires new approaches and models to the co-existence and exercise of our respective jurisdictions, and for the sharing and distribution of revenues. This relationship is important for all levels of government, municipal, provincial and federal.”

The passage of the Declaration Act and the adoption of the Action Plan reinforces the principles, commitments and recognition of the need for a new rights-based fiscal relationship to be co-developed and implemented.

What is a Fiscal Framework?

A fiscal framework is a system for defining the financial relationship between governments to support the needs and priorities of citizens/residents in accordance with agreed-upon principles. It addresses the revenue and expenditure functions and jurisdiction of each government and how intergovernmental transfers are structured. The need for a fiscal framework arises when revenue capacity and spending needs are unevenly distributed across orders of government, creating a gap between a government’s spending power and its rights and responsibilities, sometimes referred to as a ‘fiscal imbalance’. This is a common feature of federal states.

In Canada, the *Constitution Act, 1867* sets out what topics are within the jurisdiction of the federal government, provinces, and territories, and what types of revenue each level of government can collect. The federal government collects more taxes than it requires to fund its own programs, while provinces and territories collectively do not raise enough revenues to fund their programs. The federal government reduces the size of this vertical fiscal imbalance by providing a variety of transfers (such as the Canada Health Transfer and Canada Social Transfer) to help fund provincial and territorial programs.

There are also horizontal fiscal disparities in Canada: disparities between provinces and territories in terms of their capacity to raise revenue to fund their own programs. The federal government uses other transfers (namely equalization and territorial formula financing) to reduce these disparities by providing funding to territories and provinces to help give them the capacity to provide reasonably similar levels of taxation.

In general, a well-designed fiscal framework should be coherent and principles-based. It should address the following considerations:

- The allocation of expenditure roles and responsibilities and revenue raising powers between orders of government to meet the needs of each governments citizens/residents.
- The principles and criteria for developing and evaluating the component fiscal mechanisms and tools.
- The design and administration of component fiscal mechanisms, such as taxation, revenue-sharing, fiscal transfers, and revenue from economic development.
- A model for how the fiscal mechanisms and tools fit together in an integrated way, consistent with the allocation of expenditure needs and revenue capacity.

In the context of developing a new fiscal relationship and framework that supports the operation of First Nations governments, these generic elements need to be understood and implemented in ways that are rights-based and principled. For example, a new fiscal framework will need to ensure that these elements reflect First Nations values and of section 35 rights, and align with the UN Declaration. And unlike the federal-provincial relationship where jurisdiction and expenditure powers are listed in the *Constitution Act, 1867*, a new fiscal framework inclusive of First Nations governments must respect the self-determined priorities and visions of First Nations. As such, it must encompass multiple pathways of structuring economic and fiscal relations with varying approaches to articulating each government's jurisdiction and expenditure roles and responsibilities.

The Province recognizes that the development of a new fiscal framework is urgent and interrelated and interdependent with economic transformation and how land and resource decision-making takes place. It is not enough to change fiscal relations alone, while decisions are made in the same ways as in the past, based on the same laws and Eurocentric economic worldviews. Land and resource decision making, management, the economy and fiscal relations are tightly related and shifts will be seen across each as Indigenous rights are fully recognized. As such, throughout the work to develop a new fiscal framework, efforts will be taken to ensure it is co-ordinated and coherently connected to other critical work, including the implementation of the Action Plan, the alignment of laws required by section 3 of the Declaration Act and the development of new models of decision-making and agreements.

Elements of the Current Fiscal Framework

To inform the development of a new fiscal framework, it is important to identify elements of the current fiscal framework as part of clarifying what has worked, what is not working or remains unaddressed and what options and directions for change are needed.

The Province's current fiscal framework continues to reflect the legacies of historical approaches that were enabled by the dispossession of Indigenous Peoples from their lands, the denial of Indigenous rights and by a legal framework based on the *Indian Act*.

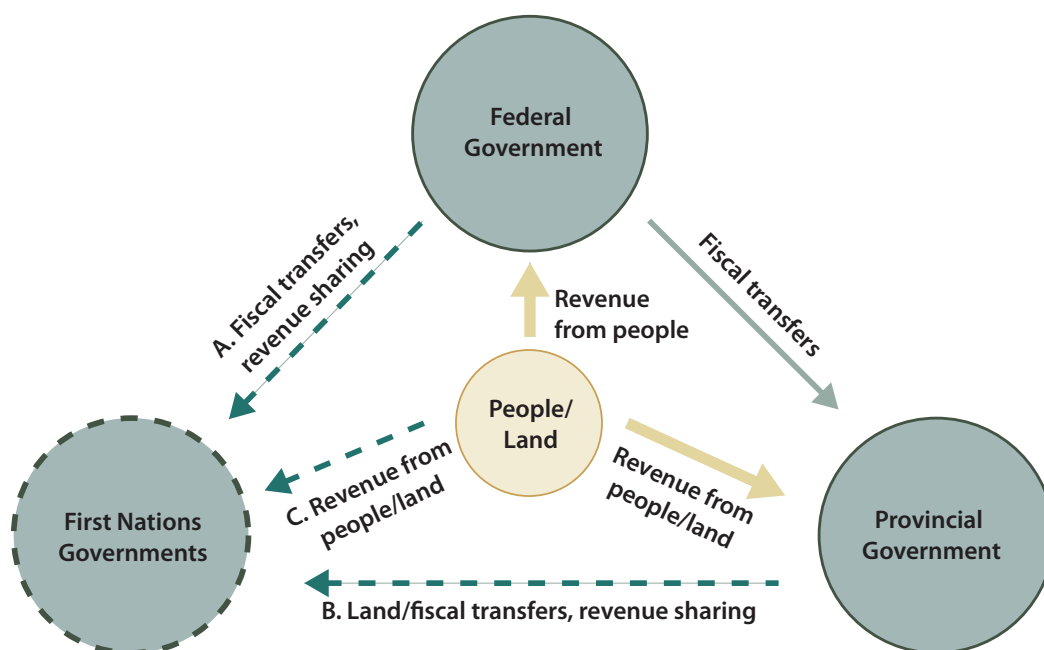
The current fiscal framework with First Nations includes the following elements:

- The foundation of Canada's economic system is based on a western social and economic worldview, that historically has not considered Indigenous values or economic systems and systematically excluded First Nations.
- A primary focus on fiscal relations has been at the First Nations' "Band" or community level with less emphasis on fiscal relations that support collective title and rights holding peoples.
- British Columbia is ahead of other provinces in sharing natural resource revenues with First Nations. However, these revenue sharing formulas have been developed as shares of existing sector-based revenue streams and tools, and not developed as tools specifically designed to reflect a distinctions-based approach that recognizes section 35 rights, including title.
- In the modern treaty context, an historic view that the provision of nominal annual transfers addresses modern treaty Nations' fiscal needs. The Province has acknowledged the inadequacy of this approach and is working to revitalize fiscal relations and address fiscal policy limitations in the modern treaty context.
- Revenue-sharing mechanisms are used to facilitate specific economic or resource development projects to meet legal obligations, resolve issues, support negotiation capacity and provide funding for programming. Often, these mechanisms have been developed unilaterally by the Province.
- In the natural resource sector, there has been an increase over time in revenues shared with First Nations, but not in a comprehensive policy framework. The approach has been transactional and often ad-hoc, based on provincial principles and objectives, and more focused on the near-term involvement of First Nations participation in the resource sector.
- Fiscal mechanisms and tools are rarely based on the recognition of the right of self-determination and the inherent right of self-government and that First Nations governments have roles and responsibilities to serve their citizens and must derive revenues from their lands and resources to support filling those roles.
- With a few exceptions outside of the modern treaty process, there has been little co-ordination between provincial and federal governments to support enduring fiscal relations with First Nations governments.

These elements reflect the reality that throughout Canada's history and legal framework, the fiscal framework has mostly excluded First Nations. Even though natural resources are subject to section 35 rights, federal and provincial governments have substantially derived the economic benefits from those resources. Establishing a new fiscal framework is part of addressing and transforming this reality.

At a high level, a scope of new fiscal framework discussions will encompass the full range of fiscal flows that could support the operation of First Nations governments, including economic rents/royalties, taxation, transfers and the promotion of own source revenue through economic development, as well as new and emerging revenue streams. Currently, the fiscal flows to First Nations have often been ad hoc, based on provincially-determined principles that were not co-developed and not subject to a comprehensive rights-based framework. Developing a new fiscal framework must change this.

To illustrate, the following diagram provides a high-level overview of the components of the current Canadian fiscal framework. Government revenues can either come from people or land and resources. Governments then use the revenues to carry out their varied responsibilities in a complementary way, ensuring they are working together to deliver programs, services and infrastructure. To be clear, the diagram below is a simplified representation of current fiscal flows and is not a statement of the broader economic worldviews of First Nations or the Province's intended outcome for the new fiscal framework.



Currently, the **federal government** collects taxes and fees and uses these revenues for a host of purposes, generally related to Canada-wide functions like defence, a national transportation system, fisheries, foreign affairs, etc. It also plays a large role in ensuring that provincial governments have the resources necessary to meet their funding obligations. These tools include per capita-based health transfers and social transfers and the equalization program that are all designed to redistribute revenues in a way that ensure Canadians receive similar health care, education and other services, regardless of where they live in Canada. The federal government also provides targeted and/or time-limited funding to provinces in some areas of mutual priority (e.g., housing and infrastructure). The federal government has a fiduciary responsibility for Indigenous Peoples² in Canada, including responsibilities in relation to funding Indigenous self-determination. Arrow A in the chart above, in large part, reflects these responsibilities.

Provincial governments collect their own taxes and fees and are also constitutionally permitted to collect natural resource revenues (e.g., royalties). Provinces then use these revenues to administer a host of programs, including the health care, justice and education systems, as well as many other social programs. Provinces rely heavily on health, social and targeted transfers from the federal government to fill in their funding gaps and some also rely on the equalization program. These federal programs support each province in providing quality services to residents. The provinces are also responsible for managing lands and resources for the benefit of their residents. In this context, provinces also have a large role to play in advancing a rights-based fiscal framework that supports the operation of First Nations governments, including revenue-sharing related to natural resources represented by Arrow B.

First Nations governments have largely been excluded from the Canadian fiscal framework. Apart from modern treaty nations and self-governing Indigenous nations, traditionally fiscal flows were focused on funding for Indian bands on reserve. While federal funding (Arrow A) has increased and some First Nations have greater access to own source revenues, there is significant work yet to do. Revenue and benefit sharing by the provincial government (Arrow B) has also increased over time, but these arrangements are largely based on provincial principles and objectives. The work ahead is to create a new approach to building out the fiscal mechanisms and tools reflected by arrows A, B and C, and in particular through this process, fiscal relations between the Province and First Nation governments.

2 Consistent with section 35 of the *Constitution Act, 1982* and section 1 of the Declaration Act, the term “Indigenous Peoples” includes First Nations, Métis and Inuit Peoples in Canada.

PART 2 – APPROACH

Vision

The co-development of a new fiscal framework must be based on a common understanding of the starting-point framework (Diagram 1 above), a core set of shared objectives and principles, the recognition and co-operative implementation of section 35 rights, including title, and be consistent with the UN Declaration.

This work should contribute to a shared understanding of the current fiscal framework, including an understanding of the design and intent of existing provincial transfers and revenue sharing arrangements. This will support co-development of a joint vision for a new framework and the process for achieving it.

A starting set of principles and objectives to guide this work was jointly developed by First Nations and the Province in 2018 and endorsed in the Joint Agenda: *Implementing the Commitment Document (Concrete Actions)*:

- Recognizing the economic component of Aboriginal title;
- Recognizing First Nations as key players and drivers in the economic landscape;
- Recognizing that all governments require multi-streams of revenues to support their capacity to be strong and effective in serving their citizens and so a full range of options are to be identified;
- Recognizing accountabilities associated with government operations;
- The shared objective of achieving and maintaining strong local, regional and provincial economies;
- The shared objective of closing the socio-economic gap.

The new fiscal framework must also be consistent with the UN Declaration. While the UN Declaration must be read in a manner that recognizes the relationship between all of the articles, there are also many articles that directly inform the development of a new fiscal framework. These articles include those related to self-government and self-determination (articles 3, 4 and 5), developing and maintaining economic institutions and systems (article 5 and 20), participation in decision-making and legislative development (articles 18 and 19), improvement of economic and social conditions (article 21) and to lands and resources (article 26, 27, 28, 29 and 32).

As the new fiscal framework co-development work moves forward, it is anticipated that the above objectives and principles will need to be built out in greater detail. To support discussions around creating a vision for the new fiscal framework work, the Province has done some preliminary thinking around high-level new fiscal framework objectives/outcomes that could help guide the new fiscal framework policy work (Appendix A). These build on the objectives listed in the *Concrete Actions* above and are included to help start this policy discussion, as we move forward in consultation and co-operation.

Two Tracks

The work of developing a new fiscal framework is urgent. First Nations governments are facing enduring and immediate economic and fiscal pressures and need increased and new sources of revenue. At the same time, as is identified above, this work must be done in a principled way, and achieve the goal of an enduring, comprehensive, rights-based new fiscal framework.

To address this urgent reality, while also ensuring the work is done properly and achieves the goal of comprehensiveness, the Province is anticipating proceeding with the development of a new fiscal framework on two simultaneous and interrelated tracks of work with First Nations.

Track 1 - High-level new fiscal framework visioning

Track 1 is the co-development of a new model or models of fiscal relations, including the vision, objectives/outcomes, fiscal principles, mechanisms and tools, and how those will be applied comprehensively. This includes looking at revenue-sharing, fiscal transfers, taxation and other fiscal tools and will require significant collaboration with the federal government. This will also require a comprehensive examination of the economic components of land and resources that are used by governments to create wealth and how access to land and resources could be a part of a fiscal framework. This is a comprehensive stream of work that will take time and is envisioned to be developed during the five-year time span of the Declaration Act Action Plan (2022-2027).

This discussion will be broad and can explore existing fiscal mechanisms and tools available to other governments in Canada and abroad, including economic rents/royalties, transfers from other orders of government, taxation and the promotion of private sector investment and economic development, as well as potential new mechanisms that may not yet exist. A key consideration in building a new fiscal framework will be the unique rights, needs and roles of First Nations.

It is envisioned this track 1 work will initially include the following foundational components:

1. Developing a common understanding for a vision for a new fiscal framework, including the high-level framing (e.g., Diagram 1) and a common set of objectives/outcomes to help guide the work (the *Concrete Actions* are the starting point).

2. Developing a detailed set of fiscal principles to guide the policy work (the *Concrete Actions* are the starting point).
3. Government-to-government engagement and policy discussions to understand the unique cultures, economies and funding needs of First Nations.
4. Taking inventory of fiscal frameworks/tools used in other jurisdictions and surveying the leading fiscal and economic literature that can inform this new fiscal framework.
5. Identifying considerations for, and components of, a model of a new fiscal framework.

There are several preliminary questions and issues that arise from this track 1 work. We invite your initial feedback on these questions, as they will help inform our early engagements.

Track 1 - Questions

1. **High-level new fiscal framework framing (pages 5-9)** – A new fiscal framework must transform the status quo of fiscal relations between the Province, Canada and First Nations. What are key foundations or elements of a new fiscal framework that transform the status quo, reflect First Nations worldviews and are rights-based?
2. **New fiscal framework objectives and principles (Appendix A)** – The Province has included preliminary objectives and principles that build on those in the *Concrete Actions*. What are your suggestions for objectives and principles that build on those in the *Concrete Actions* to ensure we have a comprehensive and detailed set of objectives and principles to guide this work?
3. **Taking inventory of other jurisdictions and academic literature** – The Province will undergo a review of fiscal mechanisms and tools used in other jurisdictions and of leading academic literature. Are there any models or examples of particular relevance from your perspective that we should include in this inventory?

Track 2 - Near-term changes (forestry revenue sharing)

Track 2 is the co-development of near-term changes to revenue-sharing streams that can be implemented while track 1 is still being fully developed. The goal of these near-term changes is to apply and test new principles and mechanisms in alignment with, and to inform the development of, the model that form part of track 1. At the same time, track 2 changes will also provide increases in revenues to First Nations without having to wait for the full co-development and adoption of a comprehensive new fiscal framework.

The Province has committed, based on what it heard from First Nations, that changes to forestry revenue sharing must be one of these track 2 changes that sees more immediate increases in revenue streams to First Nations. On April 27, 2022, the Ministry of Indigenous

Relations and Reconciliation, Ministry of Finance, and Ministry of Forests committed to co-develop a new forestry revenue sharing model with First Nations as part of its commitment to a new fiscal framework that recognizes, respects and supports Indigenous Peoples' right to self-determination. This early focus on forestry in track 2 reflects the significance of the provincial forest economy, the large number of First Nations impacted by forestry activities and a shared interest in advancing comprehensive agreements with First Nations on forestry and forest stewardship.

Consistent with the understanding that the new models of fiscal relations are interrelated with new models of shared decision-making, co-development of near-term options that shift current revenue-sharing approaches for forestry will not be addressed in isolation. As track 2 evolves, the Province will continue to work to reform forest legislation, regulations and policy to reflect a shared strategic vision with First Nations that upholds the rights identified in and objectives of the UN Declaration (Declaration Act Action Plan Action 2.10).

Implementation of the Old Growth Strategic Review, Indigenous stewardship forums, forest landscape planning, modernized land-use planning, shared decision-making and greater access to forest tenure are all key to advancing integrated economic and land co-management opportunities. These need to work in tandem with revenue sharing so that comprehensive approaches to forestry and forest stewardship can be implemented government-to-government through various forms of agreements. At the same time, changes to revenue sharing need to also consider those circumstances where comprehensive agreements do not exist and thus not limit access to this important aspect of reconciliation.

In April 2022, the Province announced an increase to revenues shared under the existing Forest Consultation and Revenue Sharing Agreement (FCRSA) program and new agreement language with a focus on a government-to-government relationship. The increase is an interim step intended to respond to longstanding feedback and to provide additional revenue to First Nations while a new model for forestry is co-developed. Appendix B provides a summary of the evolution of forest revenue sharing over time in response to court decisions, policy direction and engagement with First Nations.

In addition to the foundation components outlined under track 1, it is envisioned that track 2 work will initially include the following additional elements as we move forward:

1. Developing a common understanding for a vision for a new forestry revenue sharing model, including a common set of objectives/outcomes to help guide the work that are consistent with the *Concrete Actions* and the track 1 visioning development.
2. Developing fiscal principles to guide the forestry policy work that are consistent with *Concrete Actions* and track 1 principles as starting point.

3. Government-to-government engagement and policy discussions to understand the unique circumstances of each First Nation and the linkages between forestry revenue sharing and the forest economy (Note: Significant discussions have already occurred).
4. Creating a common understating of the scope of forestry revenue sharing (i.e., what revenue streams should be considered “forestry revenues?”).
5. Mapping out the important linkages between forestry revenue sharing and tenure (i.e., how should forest tenure relate to revenue sharing moving forward?).
6. Examining the intersection between forestry revenue sharing model approaches and the relationships, protocols and understandings between First Nations about their territorial boundaries
7. Considering how forestry revenue sharing connects with other components of the forest sector transformation, including Indigenous collaborative stewardship, land-use planning, forest landscape planning and shared decision-making.
8. Understanding the role forest revenue sharing plays in advancing comprehensive agreements with First Nations on forestry and forest stewardship.

There are a number of preliminary questions that arise as we start to develop a new forestry revenue sharing model. We invite your initial feedback on these questions, as they will help to inform our early engagements.

Track 2 - Questions

1. **High-level forestry revenue sharing framing (pages 12-15)** – A new forestry revenue sharing model must transform the status quo and be consistent with the *Concrete Actions* and track 1 principles. What are key foundations or elements of a new fiscal framework that transform the status quo, reflect First Nations worldviews and are rights-based?
2. **New fiscal framework forestry principles** – Are there fiscal principles important in the forestry context and unique to forestry that may not be captured by the principles in track 1?
3. **Scope of Forestry Revenue Sharing** – What revenue streams should be considered “forestry revenues” for the purposes of developing a new forestry revenue sharing model?

PART 3 – PROCESS

Engagement Elements

The development of a new fiscal framework must be done jointly through a process of co-development based on consultation and co-operation.

Reflecting this, the following elements will guide the Province in the consultation and co-operation process:

- The Province does not have a pre-determined vision or outcome for a new fiscal framework. The material above is intended to build on the *Concrete Actions* principles and objectives and is just a starting point. Consultation and co-operation in this process is about building the new fiscal framework together.
- We are not starting from scratch. First Nations have been clear about the urgency to develop a new fiscal framework, that it must be principled and rights-based and needs to be comprehensive. Ideas, options and information that First Nations have provided previously about a new fiscal framework will be used within the process.
- First Nations and the Province must engage directly and regularly throughout the process. This includes ensuring section 35 rights holders have access to all the information required to make informed decisions and conduct their own analysis, and diverse opportunities and resources to participate in and contribute to discussions on substantive policy matters, including the identification of preferred options for new revenue sharing models and other fiscal mechanisms.
- The Province will honour all existing commitments in existing agreements with First Nations regarding doing work co-operatively to develop new fiscal mechanisms or revenue sharing arrangements. This includes, for example, the collaborative fiscal policy work that is currently underway with modern treaty nations, which will continue as part of track 1.
- The role of First Nations organizations within the process will be based on direction given by proper title and rights holders through the established mechanisms that exist amongst First Nations for directing such work.

Engagement Plan

The Province offers an ambitious agenda to First Nations to support this collective work towards a new fiscal framework. Extensive dialogue with First Nations will be offered to build an overarching model or models of new fiscal relations (track 1). These conversations will be used to guide policy development. This includes a near-term emphasis on forestry revenue sharing (track 2) with the goal of having revenue-sharing changes implemented in 2024.

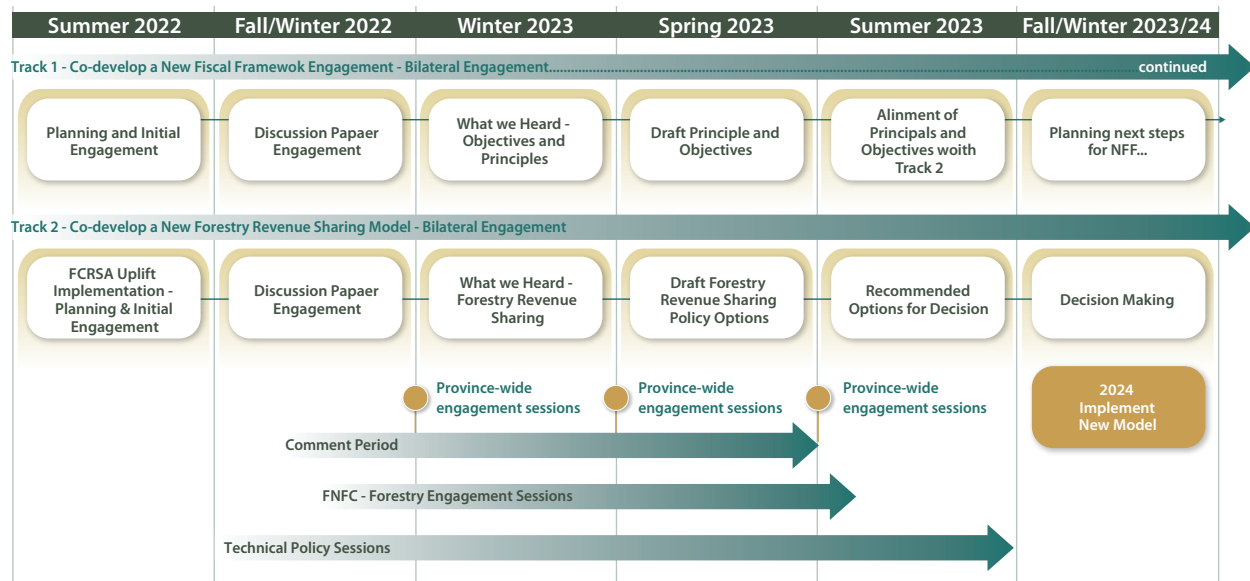
The broader new fiscal framework (track 1) is anticipated to be a longer-term project that will be brought into focus with the co-development of a suite of fiscal measures to support the new fiscal framework in the next five years and beyond.

A proposed timeline for the first steps in track 1 and track 2 is the following:

- Fall 2022 – Release of Discussion Paper for review, comment and feedback from First Nations, including sharing of perspectives on proposed engagement process and key elements of a new fiscal framework (track 1)
- Fall 2022 – Province-wide virtual engagement on both tracks
- Fall 2022 – First Nations Leaders' Gathering
- Fall 2022/Winter 2023 – Province-wide engagement on both tracks
- Fall 2022/Winter 2023 – Province-wide forestry specific forum and regional workshops on forestry modernization, which will include engagement on the new fiscal framework and forestry revenue sharing (track 2)
- Winter 2023 – Based on what has been heard through engagement, release of a "what we heard paper" will be shared for review, comment and discussion with First Nations (tracks 1 and 2)
- Winter 2023 – Province-wide engagement session to assess progress on tracks 1 and 2 and identify options for further focus
- Spring 2023 – An options paper will be shared for review, comment and discussion with First Nations (tracks 1 and 2), the public and key stakeholders
- Spring 2023 – Province-wide engagement session to review options (tracks 1 and 2)
- Summer 2023 – Co-development of final options, including track 2 options, with the goal of implementation in 2024.

- Summer/Fall 2023 – Review and potential adoption of options by the Province and First Nations

New Fiscal Framework and Forestry Revenue Sharing Consultation and Cooperation Pathway



DELIVERABLES – OCTOBER 2022 TO JUNE 2024	ESTIMATED DATE OF DELIVERY
Discussion paper 1: a starting point for NFF and forestry revenue sharing development and engagement	November 2022
Discussion paper 2: what we heard paper on NFF and forest revenue sharing	February/ March 2023
Draft NFF principles & objectives, preliminary options paper for forest revenue sharing	May 2023
Recommended option for forest revenue sharing, informed by co-developed principles and objectives	August 2023
Decision-making on new forestry revenue sharing model	Fall 2023
Implementation of a new forest revenue sharing model	April 2024
Discussion paper 3: status update on track 1 policy development and engagement and proposal for track 2 next steps	June 2024

To support the engagement plan, it is anticipated that a range of engagement opportunities and mechanisms will be used, including:

- Province-wide virtual engagement sessions with First Nations
- Direct bilateral engagement with First Nations
- Continued bilateral engagement with modern treaty nations as part of treaty implementation processes
- Formal comment periods and opportunities for written analysis and feedback
- Development of expert reports

- New fiscal framework technical policy sessions with First Nations representatives, experts and advisors
- First Nations Forestry Council-led Provincial Forestry Forum and regional workshops on forestry modernization with First Nations
- Technical support through First Nations organizations, such as the First Nations Leadership Council, Alliance of Modern Treaty Nations and First Nations Forestry Council, as required.

NEXT STEPS:

For more information on engagement on tracks 1 and 2, please contact irr.newfiscalframework@gov.bc.ca, and visit <https://engage.gov.bc.ca/newfiscalframework> where you can find:

- An online space where you can provide specific feedback
- Important dates and registration for engagement sessions
- Relevant background materials
- Key contacts

APPENDIX A – PRELIMINARY PRINCIPLES AND OBJECTIVE FOR A NEW FISCAL FRAMEWORK

To support our discussions around creating a vision for the new fiscal framework, the Province has done some preliminary thinking around high-level new fiscal framework objectives/outcomes. These build on the objectives listed in the *Concrete Actions* above and are included here to help start policy discussion as we move forward.

Objectives/outcomes (presented to start discussions):

1. **The Province recognizes the economic component of Aboriginal title and does so holistically.** Resource revenue sharing should better reflect the components of Aboriginal title and explore different tools that can be used to create wealth, as well as provide direct sources of revenue from the use of resources. Resource revenue sharing should be part of a whole of government approach to managing resources with rights and title holders that involves all aspects of stewardship, including decision making, accountabilities and expenditures.
2. **The fiscal needs of Indigenous governments, the Province and the federal government are effectively balanced.** The Province acknowledges that First Nations do not currently have the fiscal tools to meet their needs and that there is work to be done to bring First Nations into the Canadian fiscal framework. As First Nations governance continues to grow (e.g., service delivery), the fiscal relationship will need to reflect the increased responsibilities and accountabilities. While the federal government has the primary responsibility for funding Indigenous governments, the Province has an important role to play, especially in relation to land and resources.
3. **Whole of government approach to funding engagement and consultation with Indigenous Peoples is developed.** Significant consultation and engagement between the Province and rights and title holders is needed to support shared decision-making and effective government-to-government relationships. The current approach, based largely on transactional, short-term funding arrangements, requires transformation so that Indigenous governments have a consistent and reliable stream of revenue to support the engagement and consultation activities with the Province.

4. **Sustainable economic development is achieved across the Province.** The new fiscal framework should promote economic activities for First Nations communities, while also supporting the broader provincial economy. Promoting inclusive growth by overcoming historical barriers to Indigenous economic development will drive co-operation and partnerships, improving investor confidence and supporting economic development across the province.
5. **Treaties, agreements and other constructive arrangements are supported.** The new fiscal framework should focus on removing barriers and creating opportunities to advance modern treaties, agreements and other constructive arrangements that support self-determination and self-government.
6. **Socioeconomic outcomes of Indigenous Peoples are improved.** The new fiscal framework should support improved outcomes on socioeconomic indicators, including income, wealth, poverty, education, family services, health and justice. Improved socioeconomic outcomes will further support economic participation, helping to build strong Indigenous communities.

The Province has also done some preliminary thinking around principles, building out in more detail those outlined in the *Concrete Actions*. These are preliminary ideas for consideration to help start the new fiscal framework discussions.

Principles (presented to start discussions):

Principles that support relationship building:

1. **Consistency with UNDRIP.** The new fiscal framework must be consistent with the Province's obligations in the *Declaration on the Rights of Indigenous Peoples Act* to contribute to the implementation of Indigenous rights in the UN Declaration.
2. **Distinctions-based.** The Crown has distinct obligations to Indigenous Peoples with regards to section 35 rights and the inescapable economic component of title.
3. **Co-development.** The new fiscal framework must be co-developed by the Province and Indigenous Peoples, in collaboration with Canada.
4. **Accountability.** The new fiscal framework should promote accountability between each order of government and its citizens/residents. (e.g., the Province and its residents, First Nations and their citizens/residents).

Principles that support good policy design:

5. **Equity.** The new fiscal framework should strive for fairness while acknowledging and accommodating each government's differences. This means giving consideration to inherent advantages and disadvantages.
6. **Scalability.** The new fiscal framework is not a one-size-fits-all approach but supports each rights and title holder on their path to self-determination and comprehensive reconciliation.
7. **Sustainability.** The new fiscal framework and revenue sharing models should be built to last, focusing on both the short-term and the long-term. In addition, each government must acknowledge the role they play in supporting a sustainable economy over the long term.
8. **Revenue Stability.** The framework should help address revenue volatility, allowing for diverse, reliable revenue streams to governments.
9. **Simplicity/Transparency.** The new fiscal framework should be simple and transparent.

APPENDIX B – FOREST REVENUE SHARING BACKGROUND

The information below describes the history of forestry revenue sharing in B.C. and the status quo FCRSA program. The Province acknowledges that the Forest Consultation and Revenue Sharing Agreement (FCRSA) program will be replaced and has committed to co-developing a new forestry revenue sharing model.

2002	<ul style="list-style-type: none"> ➤ <i>Forest Act</i> amended to allow direct award forest tenures. Province enters into Interim Measures or Direct Award Agreements with First Nations.
2003	<ul style="list-style-type: none"> ➤ <i>Forest Revitalization Act</i> allowed volume take-back from industry and allocated volume to First Nations on a per capita basis (Bill 28); approx. 30m³/person (2.427 million m³). ➤ Forestry Revitalization Plan originated out of the First Nations Forestry Strategy developed by the B.C. government in 1999, which aimed to improve forest sector stability, increase First Nations participation in the forest sector and to address First Nations' interests regarding ongoing forestry decisions. ➤ Ministry of Forests committed to share stumpage revenues. ➤ Forest revenue share and direct award tenure distributed on per-capita basis via Forest and Range Agreements (FRA).
2004	<ul style="list-style-type: none"> ➤ Haida Decision – defining obligation to consult and accommodate First Nations, where land base activities impact rights and title.
2005	<ul style="list-style-type: none"> ➤ B.C. and the First Nations Leadership Council develop the New Relationship Action Plan. (The First Nations Leadership Council is comprised of the political executives of the BC Assembly of First Nations, First Nations Summit, and the Union of BC Indian Chiefs.) ➤ Joint Working Group appointed to review FRAs and make recommendations for amendments. ➤ FRA is revised and becomes Forest and Range Opportunity Agreements (FRO).

2009 to 2010	<ul style="list-style-type: none"> ➤ Working Roundtable on Forestry recommended an ‘activity-based’ model of revenue sharing and a First Nations area-based licence. ➤ 2006 Huu-ay-aht BC Supreme Court decision challenged B.C.’s per capita approach to revenue sharing on the basis that it did not reflect the degree of impact of forestry on the Huu-ay-aht’s Aboriginal Interests. ➤ The Forest Consultation and Revenue Sharing Agreement (FCRSA) replaced the FRA/FRO – transitioning from a per/capita model to an activity-based model. ➤ B.C. created a separate mechanism for direct award tenure to First Nations via Forest Tenure Opportunity Agreement (FTOA).
2011	<ul style="list-style-type: none"> ➤ First Nations Woodland Licence (FNWL) was introduced, which created a unique area-based, long-term forest tenure that is directly awarded to First Nations.
2015	<ul style="list-style-type: none"> ➤ The Province holds a series of regional engagement workshops with First Nations on the FTOA and FCRSA programs. ➤ Discussion is focused on tenure viability, access to tenure, land management, increased partnership opportunities and increased revenue sharing.
2016	<ul style="list-style-type: none"> ➤ Strategic Forestry Initiative (SFI Agreements) introduced in response to 2014 Tsilhqot’in Decision and 2015 engagement.
2017 to 2018	<ul style="list-style-type: none"> ➤ Province holds regional engagement sessions to solicit direct feedback from First Nations on the First Nations Forest Strategy, collaborative governance, resource stewardship and reducing barriers to reconciliation. ➤ The First Nations Forestry Council releases a new Draft BC First Nations Forest Strategy.
2019	<ul style="list-style-type: none"> ➤ <i>Declaration on the Rights of Indigenous Peoples Act</i> enacted.

2021	<ul style="list-style-type: none"> ➤ Modernizing Forest Policy (Intentions Paper) released (Engagement Coast & Interior Revitalization), which proposes changes to forestry policy to address the dwindling fibre supply and promote value-added wood products such as mass timber. Proposed changes include a compensatory framework to redistribute forest tenures to Indigenous Nations, forest communities and small operators. Pledges to act on the recommendations of the Old Growth Strategic Review in collaboration with Indigenous leaders, and stakeholders. ➤ B.C. carries out engagement on FRPA legislative and regulatory changes, including the new Forest Landscape Planning regime. ➤ Declaration Act Action Plan released with commitments to co-develop new fiscal framework and revenue-sharing frameworks with Indigenous Peoples (actions 1.4 and 1.5).
2022	<ul style="list-style-type: none"> ➤ Province announces that it will co-develop a new forestry revenue sharing model with First Nations as part of its commitment to a new fiscal framework that recognizes, respects and supports Indigenous Peoples' right to self-determination. ➤ Immediate implementation of interim enhancements to the revenue sharing model, which increase the amounts shared with participating First Nations by about \$63 million per year.

CURRENT FORESTRY REVENUE SHARING MODEL

Forest Consultation and Revenue Sharing Agreement (FCRSA) Summary

- ③ Over \$660M in forestry revenue has been transferred through agreements with First Nations since 2003 (\$58.6M in fiscal year 21/22)
- ③ In fiscal year 2021/22, approximately 126 First Nations held FCRSAs (~65 in Coast Area, ~36 in South Area, ~25 in North Area)
- ③ Estimated amount to be shared with the FCRSA uplift in 2022 is approx. \$106M (based on Nations with current FCRSAs)

Current FCRSA Model

An activity-based revenue sharing model with two main components:

Component 1. A share of the district forest revenue, based on the percentage of a Nations' territory that overlaps the timber harvesting landbase within each district, including:

- stumpage, waste, annual rent and BCTS revenue (average of the previous two years audited revenues).

	FCRSA ONLY	FCRSA WITH STRATEGIC ENGAGEMENT AGREEMENT	FCRSA WITH RECONCILIATION AGREEMENT
Previous Rates	3%	4%	5%
New Rates (reflective of the April 2022 interim enhancement announcement)	8%	9%	10%
Share of BCTS Revenue	11%	12%	13%

Component 2. Stumpage rebates includes:

- Stumpage paid by a First Nation on their own direct award tenures.
- This only applies to the direct award volume that was allocated from the *2003 Forest Revitalization Act* (“Bill 28 Volume”).

FCSA ONLY (NO SEA OR RA) (RFL/ NRFL/FLTC)	WITH SEA (RFL/ NRFL/ FLTC)	WITH RA (RFL/NRFL/ FLTC)	COAST (FNWL)	COAST (FNWL WITH RA)	INTERIOR (FNWL)
35%	50%	75%	70%	75%	85%

Minimum Payment:

- All Nations eligible for a minimum payment of \$35,000 to support consultation capacity (unless otherwise provided under a SEA or RA).

Transition Payment:

- With the transition from a per/capita model to an activity-based model, a component of the per/capita model was retained to limit the impact to Nations who benefited from the per/capita model; currently calculated at 40% of the previous per/capita amount (approx. \$200/person).
- Transition only applies where the annual activity amount is less than the previous FRA/FRO annual amount. Where the annual transition amount exceeds the previous annual FRA/FRO amount, the First Nation will receive an amount equivalent to the annual FRA/FRO amount.

Strategic Forestry Initiative

- Since 2015, B.C. has signed approximately 356 agreements with First Nations; providing approximately \$66M in funding to support:
 - ⊕ Tenure or equipment purchase agreements (28)
 - ⊕ B2B partnerships agreements (100)
 - ⊕ Strategic land management agreements (228)