Department of Indigenous Affairs
Government of Western Australia

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# Improvements to the Australian Tax System to Enhance the Economic, Social and Environmental Circumstances of Indigenous People and their Communities

## Submission to Australia's Future Tax System Review

DEPARTMENT OF INDIGENOUS AFFAIRS

# Contents



**Attachments**

A. Department of Families, Housing, Community Services and Indigenous Affairs (2008), *Native Title Payments - Discussion Paper*, Australian Government, Canberra, December 2008.

B. Department of Families, Housing, Community Services and Indigenous Affairs (2009), *Native Title Payments – Report*, Australian Government, Canberra.

C. Levin, A (2007), *Improvements to the Tax and Legal Environment for Aboriginal Community Organisations and Trusts - Discussion Paper*, Jackson McDonald Lawyers, Perth.

D. Minerals Council of Australia, *Henry Tax Review*, November 2008.

E. Strelein, L and Tran, T (2006), "Taxation, trusts and the distribution of benefits under native title agreements", Native Title Research Report No. 1/2007, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

F. Strelein, L (2008), *Re-Review of Australia's tax system*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 9 October 2008.

G. Strelein, L (2008), *Taxation of Native Title Agreements*, Research Monograph 1/2008, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.

# Submission Summary

**Background**

1. The Federal Government has commenced a comprehensive review of Australia's tax system with a view to making recommendations as to the creation of a tax structure that will position Australia to deal with the demographic, social, economic and environmental challenges of the 21st century and enhance Australia's economic and social outcomes (**"Henry Review"**).

2. These submissions are made by the Department of Indigenous Affairs (Western Australia) (**"DIA"**) to the Henry Review in response to the "Terms of Reference".[1] Jackson McDonald lawyers were commissioned to provide comprehensive specialist advice to assist in the preparation of this submission and their work is acknowledged and appreciated.

3. DIA's statutory duty is to promote the well-being of persons of Aboriginal descent in Western Australia.[2] Its statutory functions include:

    1) promote opportunity for the involvement of persons of Aboriginal descent in the affairs of the community, and promote the involvement of all sectors of the community in the advancement of Aboriginal affairs;[3]

    2) foster the involvement of persons of Aboriginal descent in their own enterprises in all aspects of commerce, industry and production, including agriculture;[4] and

    3) provide consultative, planning and advisory services in relation to the economic, social and cultural activities of persons of Aboriginal descent, and advise on the adequacy, implementation and co-ordination of services provided or to be provided from other sources.[5]

4. DIA also has statutory responsibility for the administration of the Aboriginal Affairs Co-ordinating Committee, whose function *'is to coordinate effectively the activities of all persons and bodies, corporate or otherwise, providing or proposing to provide service and assistance in relation to persons of Aboriginal descent'*.[6]

5. Strategically, DIA is playing a key role in the implementation of the Council of Australian Governments' (COAG) National Indigenous Reform Agreement (the National Agreement). The National Agreement is a partnership between all levels of government to work with Indigenous communities to achieve the target of 'Closing the Gap' in Indigenous disadvantage. It is overseen by a Working Group on Indigenous Reform chaired by the Hon Jenny Macklin MP Australian Government Minister for Families, Housing, Community Services and Indigenous Affairs (FaCHSIA) and is designed to fundamentally reform the public sector administration of services to Indigenous people and communities.

[1] Terms of Reference, available at http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/reference.htm
[2] Section 12 *Aboriginal Affairs Planning Authority (AAPA) Act 1972*
[3] Section 13(c) *Aboriginal Affairs Planning Authority (AAPA) Act 1972*
[4] Section 13(d) *Aboriginal Affairs Planning Authority (AAPA) Act 1972*
[5] Section 13(e) *Aboriginal Affairs Planning Authority (AAPA) Act 1972*
[6] Section 19 *Aboriginal Affairs Planning Authority (AAPA) Act 1972*

6. The National Agreement acknowledges failures of the past and is promoting fundamental changes to the public sector administration as it impacts on Indigenous persons and communities:

> *"Despite the concerted efforts of successive Commonwealth, State and Territory governments to address Indigenous disadvantage, there have been only modest improvements in outcomes in some areas such as education and health, with other areas either remaining static or worsening. Even in those areas where there have been improvements, the outcomes for Indigenous Australians remain far short of the outcomes for non-Indigenous Australians."*[7]

7. The National Agreement recognises that overcoming Indigenous disadvantage will require a long-term, generational commitment that sees major effort directed across a range of strategic platforms or 'Building Blocks', namely:

- Early Childhood;
- Schooling;
- Health;
- Economic Participation;
- Healthy Homes;
- Safe Communities; and
- Governance and Leadership.

8. At the State level, DIA is also supporting a fundamental rethink of government policy, consistent with the objectives of the National Agreement by providing a secretariat role to the Western Australian Indigenous Implementation Board (IIB), chaired by Lt General John Sanderson AC. The IIB aims to enable the Aboriginal design and delivery of services and to refocus regional governance to build sustainable communities, economies and environments through the engagement of all sectors and the maintenance of vibrant living Indigenous cultures.

9. Therefore, there is a strong alignment between the strategic objectives of the Department of Indigenous Affairs and the Henry Review. As part of its charter, DIA supports positive change to Australia's tax system that is directed at redressing Indigenous disadvantage by improving the economic, social and environmental opportunities available to Indigenous people and communities.

10. The following select indicators are presented to underpin the justification for some innovative policy developments. The indicators demonstrate the current state of Indigenous social and economic disadvantage, but more importantly also highlight the potential opportunities to transform the current welfare expenditure levels into tax producing income.

- Weekly Income - 77% Indigenous Australians report a weekly income of less than $800 compared to 76.5% of non-Indigenous Australians reporting a

[7] Council of Australian Governments (2008), *Intergovernmental Agreement on Federal Financial Relations – Schedule F National Indigenous Reform Agreement*, Commonwealth Government, Canberra, p. 3.

weekly income of less than $1000 per week highlighting a gap of $200 per week.[8]

- Housing overcrowding - Indigenous Australians are nearly 5 times more likely to live in an overcrowded household than non Indigenous Australians.[9]

- Housing private ownership - 36.5% of Indigenous dwellings are either owned or being purchased. For non Indigenous households, the figure is almost double, at 71.5%.[10]

- Employment rate - In 2006, 42.3 per cent of the Indigenous population was employed compared to 64.1 per cent of the non-Indigenous population.

- Unemployment rate - In 2006, 15.5 per cent of the Indigenous labour force was unemployed. While this represented a marked decline from the figure of 19.7 per cent recorded in 2001, it was still three times higher than the figure for the non-Indigenous population.[11]

- Welfare payments - In 2002, 50% of Indigenous Australians aged 15 years and over reported that their main source of income was from government pensions and allowances.[12]

11. In its 2008 report, the Native Title Payments Working Group stated that:

> *"There is broad recognition among the Working Group that the current social and economic policy framework in Australia has failed to create sufficient progress towards economic independence for Indigenous people and is in need of a radical re-think."*

12. Australia's tax system is a significant aspect of this policy framework. Economic independence of Indigenous people is one of the challenges that DIA submits should be addressed as a priority via the Henry Review.

13. These submissions support proposals for change that would have a positive impact upon Indigenous persons generally. Other recommendations are directed at Indigenous persons and communities whose traditional lands are the subject of resource or infrastructure development and are therefore the source of financial benefits being provided to those Indigenous persons and communities (referred to generally as "native title payments").

14. In summary, DIA recommends that the Henry Review seek to support the objectives of the COAG National Indigenous Reform Agreement and the Western Australian Indigenous Implementation Board by striving for economic settings that promote sustained and strategic regional partnerships between Indigenous communities, governments, and the private and community sectors that are designed to strengthen

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[8] SCRGSP (Steering Committee for the Review of Government Service Provision) 2009, *Report on Government Services 2009, Indigenous Compendium*, Productivity Commission, Canberra.

[9] Paper produced by the Centre for Aboriginal Economic Policy Research (CAEPR) funded by the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA).

[10] See note 2

[11] Biddle, N., Taylor, J. & Yap, M. (2008), *Indigenous Participation in Regional Labour Markets, 2001-2006*, CAEPR Discussion Paper No. 288/2008. Australian National University, Canberra, p. ix.

[12] ABS. (2004). *National Aboriginal and Torres Strait Islander Social Survey 2002, Cat. no. 4714.0.* Canberra: ABS.

the seven Building Blocks. The recommendations in this submission are geared to achieve a greater level of economic certainty and opportunity, social equity and environmental sustainability.

**RECOMMENDATIONS**

15. These submissions support the following recommendations for amendment to Australia's tax system:

**New Category of Income Tax Exempt and Deductible Gift Recipient for Aboriginal Development Entities**

1) the establishment of a particular entity for the promotion and benefit of Indigenous persons which is granted income tax exempt status or concessional exempt status under Division 50 of the *Income Tax Assessment Act 1997* (Cth) (**"ITAA 97"**) and deductible gift recipient status under Division 30 of the ITAA 97;

**Continued Use of Charitable Organisations for Indigenous Communities**

2) an amendment of the statutory extension of the definition of charity in the *Extension of Charitable Purposes Act 2004* to remove difficulties in Aboriginal entities satisfying the different aspects of the definition of charity;

3) an amendment to Divisions 30 and 50 of the ITAA 97 to confirm that entities established for the advancement and development of Aboriginal communities fall within the definition of "charity" for the purposes of Australia's tax legislation;

4) allowing long term tax exempt accumulation of native title payments with appropriate governance and auditing arrangements and appropriate accumulation limits;

5) confirmation that a native title payment made to a trust is to be considered a capital receipt and that only the income of the trust is required to be applied for charitable purposes;

**Native Title Payments – Clarification of Tax Treatment**

6) statutory confirmation of the tax treatment (both for the payer and the payee) of payments made under mining and infrastructure agreements. That is, payments made either:

   (i) for the extinguishment or voluntary surrender of native title rights; or

   (ii) as consideration for the temporary impairment or suspension of native title rights;

**The Link to Social Security**

7) confirmation that native title payments are not to be treated as income of an individual and are not to be taken into account for the purposes of the social security income test;

8) alternatively, distributions or payments by Indigenous entities or other approved entities to individuals:

(i) of up to a pre-determined capped amount to be excluded from the income test and social security thresholds imposed by the *Social Security Act 1991* (Cth) and relevant supporting legislation; or

(ii) be excluded from the income test and social security thresholds imposed by the *Social Security Act 1991* (Cth) and relevant supporting legislation if they are within the scope of an approved purpose for economic, social, environmental or cultural capacity building and development.

9) distributions made by Indigenous entities or other approved entities to individuals to be specifically made subject to the *Social Security Means Test Treatment of Private Trusts – Excluded Trusts Declaration 2005*;

**Springboard Activities**

10) individuals (other than persons who are in receipt of social security benefits) be permitted to receive payments or distributions from Indigenous entities or other approved entities on a tax exempt or tax concessional basis to facilitate the individual to participate in "springboard activities", with a number of conditions on payments applying, including a restriction on use of payments for approved programs;

**Engagement of Private Sector – Incentives to Enhance Aboriginal Economic Development**

11) the granting of full and immediate tax deductibility for expenditure incurred on specific capacity building and community infrastructure in Indigenous communities;

12) the granting of up-front income tax concessions similar to the research and development tax deduction/credit for capital investment in Indigenous businesses or enterprise development in Indigenous communities;

13) the provision of flow through tax treatment coupled with tax exempt income and capital gains for venture capital partners in Indigenous enterprise development, subject to (amongst other things):

(i) the enterprise investing in permitted investments in Indigenous economic development initiatives; and

(ii) meeting minimum Indigenous ownership and equity arrangements;

**Superannuation**

14) the recipients of native title payments be given the right to make contributions of native title compensation payments to a regulated superannuation fund up to an amount equivalent to the CGT Cap Amount without such contributions being subject to the imposition of contributions tax and without being counted towards the individual's concessional or non-concessional contributions caps so as to give rise to liability for excess contributions tax;

**Tax Zoning Incentives**

15) the introduction of tax zoning incentives such as a tax rebate, in addition to the current Zone A and Zone B rebates provided for residents working in

isolated areas, that is provided to individuals who perform personal services (whether as employees or contractors) in specified Aboriginal community areas, with the tax rebate being higher for Indigenous individuals who perform personal services in the specified Aboriginal community areas, which may include for example, any locations identified by COAG as priority locations.

16) The introduction of any or all of the following incentives:

(i) a rebate of tax provided to any private sector entity that invests in infrastructure, provides services or employs persons to provide services to these particular Aboriginal community areas;

(ii) additional deductions being provided for particular expenditure undertaken by private sector entities in relevant Aboriginal community areas (e.g. 125% of relevant expenditure incurred on the provision of essential infrastructure, the employment of persons or performance of services provided in that particular Aboriginal community area);

(iii) upfront deductibility of costs incurred in establishing businesses that will provide services to, employee persons who will perform services in or undertake investment in providing infrastructure to, particular Aboriginal community areas.

## New Category of Income Tax Exempt and Deductible Gift Recipient for Aboriginal Development Entities

16. The existing Australian tax system recognises many worthwhile causes through specific categories of tax exempt entities that do not fit the technical legal meaning of charity and do not rely on concepts of welfare and poverty (for example, sports, culture, science and film). No such category exists for entities that are established for the promotion and benefit of a particular Aboriginal community (referred to generally as "Aboriginal entities").

17. Aboriginal entities find it difficult to fit within the existing requirements contained in Division 50 of the ITAA 97 to be treated as a tax exempt entity. Some of the taxation issues that arise in relation to the establishment and use of charitable trusts as a means for the promotion and benefit of a particular Aboriginal community are as follows:

    1) the difficulty with the trust satisfying the legal definition of the term "charitable";

    2) the difficulty of the trust satisfying the public benefit requirement on the grounds that the trust often only benefits a particular Aboriginal community and not a wider group of Aboriginals determined by geographic location; and

    3) the issues that arise with the accumulation of funds in order to build the capital reserve of the trust.

18. The difficulty with Aboriginal communities relying upon charitable trusts is discussed in more detail below under the heading *"Continued Use of Charitable Organisations for Indigenous Communities"*.

19. The Minerals Council of Australia (MCA) has recently noted that:

> *"There is the opportunity for Indigenous people to become long-term contributors to, and drivers of regional and community development, but there needs to be institutional and economic capacity available for this to be harnessed."*[13]

20. In response to this issue, Adam Levin has proposed the introduction of a new category of Income Tax Exempt and Deductible Gift Recipient Entity known as "Aboriginal Community Foundations".[14]

21. The MCA has proposed the introduction of a category called "Indigenous Economic Development"[15]. The MCA has also advocated the proposal of a new initiative called Aboriginal Community Development Corporations ("ACDC**"**), being a new form of entity available on an opt-in basis with special tax treatment, such as full exemption on expenditure that is classed as capacity building in Indigenous communities.[16] This is specifically in line with Adam Levin's concept of "Aboriginal Community Foundations".

[13] Minerals Council of Australia, *Optimising Benefits from Native Title Agreements*, February 2009.
[14] Adam Levin, *"Improvements to the Tax and Legal Environment for Aboriginal Community Organisations and Trusts"*, August 2007 at page 7.
[15] MCA, 2009 at page 9.
[16] MCA, 2009 at page 9.

22. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), October 2008 at page 6 agrees that a new category of Deductible Gift Recipient be introduced that applies to Indigenous bodies that are carrying out community development projects, in the same manner as the exemptions that are currently provided to other bodies carrying out activities that are beneficial to communities.

23. AIATSIS suggests that the purposes of the new category of Deductible Gift Recipient could extend to projects that promote economic development or business development, bearing in mind the level of Indigenous economic marginalisation that currently exists.[17]

Submissions

24. DIA supports the proposals of Adam Levin, the MCA and AIATSIS and in particular the proposal for a particular entity established for the promotion and benefit of Indigenous persons (whether that entity be similar to an ACDC or otherwise) which is granted income tax exempt status or concessional exempt status under Division 50 of the ITAA 97 and deductible gift recipient status under Division 30 of the ITAA 97.

25. Specifically, DIA supports the proposal of the Native Title Payments Working Group, 2008 at page 11 suggesting:

> *"amendment of Divisions 30 and 50 of the Income Tax Assessment Act 1997 to establish a specific category of tax exempt deductible gift recipient entities for use by Indigenous communities for the growth and development of their specified community."*

26. It is envisaged that the Federal Commissioner of Taxation could create a register of entities that have been endorsed under this new specific category.

27. DIA generally supports the proposal of FaHCSIA, December 2008 at page 16 that:

> *"[a] new corporate entity could … be aimed at improving the governance of Indigenous organisations and the capacity of these organisations to support sustained investment and wealth creation. For example, such an entity could attract tax exemption if it were structured in a way that promoted strategies for long term accumulation of wealth and provided rules as to governance that ensured that the benefits accrued are for the long term benefit of the Indigenous community. Such an entity could be required to be registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)."*

28. We consider that the "ACDC" model proposed by the MCA (or a similar concept) might have the following features:

    1) structured to receive (on a tax free basis) the payment of benefits whether they come from the private or public sector and whether native title benefits or not (and presumably the payer being entitled to obtain a deduction for making the payment). It should be capable of holding benefits from multiple sources to maximise the governance and administrative structures in place;

    2) be registered under, and subject to, an appropriate regulatory regime, but not necessarily an Aboriginal Corporation under the CATSI Act;

    3) be "not for profit";

[17] AIATSIS, Submission to the Henry Review, October 2008 at page 6.

4) be permitted under its objects to support, but not participate in, commercial activities;

5) a class of beneficiaries that is reflective of Aboriginal traditional law and custom, rather than being designed to meet the existing requirements for endorsement of charitable entities;[18]

6) have no restriction on applying its funds for charitable purposes, as this discourages the support of beneficiaries that have successfully moved towards economic independence (discussed below under the heading *"Springboard Activities"*). The use of the funds would be without reference to concepts of welfare and poverty and be an alternative to the use of charitable trusts;

7) permitted to undertake activities that provide a combination of individual, local and regional benefits;

8) appropriate accumulation limits be set to allow for the creation of sustainable communities into the future. This would involve a widening of the ATO's current policy in relation to accumulation. The positive impacts of remote communities becoming self-sufficient are far reaching for Australian society, with the benefits being both social and economic. Accumulation within Aboriginal entities is discussed further below under the heading *"Continued Use of Charitable Organisations for Indigenous Communities"*;

9) the introduction of a culturally appropriate model constitutional document in a similar manner to the Prescribed Private Foundation model deed, to include a number of specified integrity measures including:[19]

   (i) independent responsible persons to sit on the board;

   (ii) no uncommercial transactions;

   (iii) annual audits in accordance with the relevant regulatory regime; and

   (iv) annual returns submitted to the ATO; and

10) existing charitable trusts created for Aboriginal communities be permitted to roll their assets into an ACDC without adverse tax implications (ie roll-over relief) to obtain the preferential tax treatment.

[18] Levin, August 2007 at page 10.
[19] Levin, August 2007 at page 9.

# Continued Use of Charitable Organisations for Indigenous Communities

**Charitable Purposes**

29. The rationale for the use of charitable trusts by Aboriginal communities is set out on page 5 of Levin, August 2007.

30. We refer to paragraph 3 of Levin, August 2007 in which he states as one of the objectives of his discussion paper:

> *"to assist in shifting attitudes, thinking and language away from concepts of charity and welfare and towards concepts of national priority, incentivisation, partnership and engagement."*

31. The creation of a new category of income tax exempt and deductible gift recipient for use by Aboriginal communities (as suggested above) would be a suitable means of moving Indigenous communities away from concepts of charity and welfare. However, if that option is not endorsed and adopted then Aboriginal trusts and other entities will necessarily need to continue to ensure that their entities fall within the concept and definition of "charity" in order to be entitled to be endorsed as an income tax exempt entity and to attract deductible gift recipient status.

32. The difficulties of Aboriginal communities fitting within the concept of charity are detailed in Note 5 of Levin, August 2007.

33. Some of the taxation issues that arise in relation to the use of charitable trusts are as follows:

    1) satisfying the legal definition of charitable. There is no clear statutory definition;

    2) satisfying the public benefit requirement. A trust restricted to a native title group identified by kinship fails this requirement; and

    3) trust accumulation issues (eg difficulties with accumulating capital reserves within the trust).

34. These difficulties often stem from the requirement that charities exist for the benefit of the public or a sufficiently wide section of the public. This affects the class of beneficiaries that the charitable trust may benefit. See Native Title Working Group, 2008 at page 9 for more discussion regarding this issue.

35. The limited definition of charity also affects the activities that the entity may financially support. It is difficult to support activities focussed towards growth and development of the Aboriginal community within the confines of charitable purpose (eg local business development initiatives that involve commercial activities).

Submission

36. DIA endorses the following proposals put forward by Levin, August 2007:[20]

[20] Levin, August 2007 at page 6.

1) The Federal Government has shown a willingness to "extend" the concept of charity when it is shown that worthwhile causes do not strictly fit within the technical legal definition of charity. It is in the Australian public interest that Aboriginal communities grow and prosper.

2) A possible solution is to amend the statutory extension of the definition of charity in the *Extension of Charitable Purposes Act 2004* to remove difficulties in satisfying different aspects of the definition of charity.

3) Alternatively, specific amendments could be made to Divisions 30 and 50 of the ITAA 97. A suitable amendment should be made that will confirm that entities established for the purpose of advancing and developing an Aboriginal community will fall within the definition of "charity" for the purposes of the tax legislation.

37. Note however that this course of action is not our preferred solution to the issues raised at paragraphs 23 to 29 above. A more favourable outcome is that any changes to the tax system that impact principally upon Indigenous persons and communities be *unassociated* with the concepts (and stigma) of charity and welfare (ie in the manner suggested under the heading *"New Category of Income Tax Exempt and Deductible Gift Recipient for Aboriginal Development Activities"*).

**Accumulation**

38. There are a number of Aboriginal communities interested in accumulating funds received from the making of native title payments or otherwise to create a capital base to provide for future generations and to move the communities toward self-sufficiency and sustainability. This is a beneficial step for Australian society as a whole.

39. There are significant opportunities for native title payments to be directed towards major long-term projects and intergenerational support. Aboriginal communities need to be encouraged to apply native title payments towards these opportunities, rather than cash payments to individuals where those payments may have little lasting benefit (See *Australian Government Discussion Paper*, FaHCSIA, December 2008). Permitting longer term accumulation is one such incentive.

40. Tax concessions designed to encourage long term accumulation of funds are recognised in Australia via regimes including superannuation, the Future Fund and Prescribed Private Foundations but similar concessions are not available to encourage accumulation of funds for the future of Aboriginal communities.

41. The rationale for permitting accumulation by Indigenous charitable trusts over an extended period of time is further discussed at:

1) pages 8 and 9 of Levin, August 2007;

2) page 9 of Native Title Payment Working Group, 2008; and

3) page 5 of MCA, 2009.

42. The ATO's current position in relation to accumulation of funds within charitable trusts (see paragraph 21 of Taxation Ruling 2000/11) is that while a charitable trust may accumulate some monies for later distribution, the distribution of a "*substantial part*" of the income of the trust fund is necessary in order to comply with the requirement that the trust fund be applied for the charitable purposes for which it was established.

43. There is however, some authority supporting the idea that a native title payment made to a trust is to be considered a capital receipt and is received on capital account and that retention of the payment is akin to a 'settled sum' and only the income is required to be applied for charitable purposes.[21]

Submission

44. Generally, we endorse the proposal in Native Title Payments, 2008 at page 11 of:

> *"allowing long term tax exempt accumulation of mining benefit agreement funds, with appropriate governance and auditing arrangements, to provide for the creation of an intergenerational capital base with which Aboriginal people can contribute to their own regional and economic development."*

45. To refine the proposal, a change to ATO policy or statutory relief could be considered that permits charitable trusts established for the purpose of advancing and developing an Aboriginal community to accumulate funds over an extended period and up to appropriate accumulation limits. This could be specified in compulsory guidelines.

46. The Federal Government might also seek to confirm (by way of legislative amendment or otherwise) that a native title payment made to a trust is to be considered a capital receipt and is received on capital account and that only the income of the trust is required to be applied for charitable purposes.

[21] Adam Levin, Jim O'Donnell and David Murphy, *Tax and Native Title*, Tax Institute of Australia National Resources Tax Conference, October 2008 at pages 27-28.

# Native Title Payments – Clarification of Tax Treatment

47. The taxation consequences arising from the receipt of native title payments under mining and infrastructure agreements is not sufficiently clear. A February 1998 Joint Press Release was issued by the then Federal Treasurer and Attorney-General, which announced several key taxation reforms in the area of native title. However, none of the proposed taxation reforms contemplated in the *1998 Joint Press Release* have been implemented and legislative clarification continues to be required.

48. Perhaps because of the above two factors, many Indigenous groups have chosen to utilise a tax exempt entity such as a charitable trust as the recipient of native title payments.

49. That is, if the recipient entity is tax exempt in its own right then the characterisation of the receipt of payments by that entity becomes irrelevant. The use of a tax exempt entity maximises the value of the benefits available to the Indigenous group, provided that those benefits are applied strictly in accordance with the terms of the constitutional documents of the tax exempt entity. The difficulty with the use of charitable trusts as the recipient of native title payments has been discussed above.

50. If the characterisation of native title payments for taxation purposes can be improved, there is scope to reduce the need for Indigenous communities to fit themselves within charitable trusts and other tax exempt entities in order to receive native title payments on a tax free basis.

51. We note with support the observations of AIATSIS in its submission to the Henry Review dated 9 October 2008 in relation to the taxation of native title payments. AIATSIS suggests at page 4 that there is a rationale for native title to be considered as unique and distinct for tax purposes, as is the case in other jurisdictions including Canada and the United States, rather than native title continuing to be 'fit' into traditional taxation concepts of income and property.

52. The Federal Government's view at the time of the *1998 Joint Press Release* on the existing and proposed tax treatment of native title payments is summarised in the table below.

| Type of Native Title Compensation Payment | Existing Tax Treatment | Proposed Tax Treatment |
|---|---|---|
| **For the Payee**<br>**(traditional owner group)**<br><br>For extinguishment or voluntary surrender of native title rights | Generally treated as compensation received for the loss of a capital asset and will be exempt from tax. However, the form in which the payment is made may attract income tax. | Exempt from CGT and income tax irrespective of the form in which the payment is made (e.g. lump sum, in kind or periodic payment). |
| **For the Payer (mining entity)**<br><br>For extinguishment or voluntary surrender of native title rights | Generally deductible if incurred as part of the ongoing operation of the business. However, expenses that are incurred to protect the capital assets of a business would be of a capital nature and will not be deductible for income tax purposes, but may be included in the cost base of the relevant asset. | Not deductible but may contribute to the cost base of the relevant asset for CGT purposes. |

| | | |
|---|---|---|
| **For the Payee**<br>**(traditional owner group)**<br><br>For the temporary impairment or suspension of native title rights | Payments taxed in the hands of the individual taxpayers as ordinary income at marginal tax rates. | Payments will be taxable irrespective of the form of the payment via a 4% withholding tax. |
| **For the Payer (mining entity)**<br><br>For the temporary impairment or suspension of native title rights | Generally deductible if incurred as part of the ongoing operation of the business. However, expenses that are incurred to protect the capital assets of a business would be of a capital nature and will not be deductible for income tax purposes, but may be included in the cost base of the relevant asset. | Payments will be deductible and the deduction will be available over the period of impairment to which each payment relates where this is more than 13 months. |

53. It is understood that these items are still on the Treasury agenda, however this has not progressed beyond the consultation stage.

54. See also Native Title Payments Working Group, 2008 at page 9 for a discussion of these issues.

<u>Submission</u>

55. The proposed tax treatment of native title payments as suggested in the *1998 Joint Press Release* be considered by the Henry Review:

    1) payments received for the extinguishment or voluntary surrender of native title rights be specifically treated as exempt from CGT and income tax (to avoid the possible taxing of these payments when made over a period of time);

    2) confirmation be provided that the payments made for the extinguishment or voluntary surrender of native title rights be treated as either deductible or are non deductible to the payer (and where non deductible, the amounts paid can be included in the cost base of the relevant asset for CGT purposes);

    3) payments received as consideration for the temporary impairment or suspension of native title rights are not taxable in the hands of the recipient at ordinary marginal rates of tax but are taxable at a flat rate of tax (say 4%, which can be remitted as a withholding tax by the payer at the time of making the payment); and

    4) confirmation be provided that payments made as consideration for the temporary impairment or suspension of native title rights will be deductible to the payer and the deduction will be available over the period of the impairment to which each payment relates where this is more than 13 months (eg to avoid the deductibility of these payments being determined by whether the payments are “incurred” as part of ongoing operation of the business of the payer).

56. The Federal Government would need to specifically amend the provisions of the ITAA 97 and the Taxation Administration Act 1953 (Cth) to give effect to each of the above suggestions.

## The Link to Social Security

57. Individual beneficiaries who may benefit financially from an Aboriginal charitable trust often also receive social security income streams such as Abstudy, Age Pension or Disability Support Pensions pursuant to the *Social Security Act 1991* (Cth).

58. The receipt of income, including distributions from Aboriginal charitable trusts, can have the effect of diminishing the amount of income that can be derived from social security payments.

59. A decision by an Aboriginal community to apply native title payments towards the direct benefit of individuals (via distributions from the relevant trust) within the scope of approved purposes for economic, social, environmental or cultural capacity building and development should not result in the corresponding loss of social security benefits that would otherwise be payable to relevant members of the Aboriginal community in receipt of those payments.

60. See Levin, October 2008 at pages 28-29 for further discussion of the impact of trust distributions on social security payments.

61. There have also been a number of private binding rulings endeavouring to clarify the capital nature of native title payments that are received by a charitable trust and then eventually distributed by that trust to members of the relevant Aboriginal community for which the native title payments were made. However, the impact of the receipt of these distributions made by charitable trusts to members of the Aboriginal community on social security payments being received by members of that Aboriginal community is a matter that is uncertain and requires clarification.

<u>Submission</u>

62. The ITAA 97 be amended to provide confirmation that native title payments:

    1) are to be treated on capital account when received by an entity formed to accumulate and administer the application of these payments for the promotion and benefit of an Aboriginal community (see section entitled *Native Title Payments – Clarification of Tax Treatment* above);

    2) will retain their capital character on distribution by a charitable trust (or other tax exempt entity) to an individual; and

    3) are not to be treated as income and are therefore not taken into account for the purposes of the social security income test.

63. In the alternative, distributions made by Indigenous entities should be specifically made subject to the *Social Security Means Test Treatment of Private Trusts – Excluded Trusts Declaration 2005*. As stated by AIATSIS:

> *"The declaration provides a model for exemption based on a dominant purpose test of the tax entity as well as a means of dealing with the flow on effects of distributions. Native title trusts can easily fall under the definition in section 5 of the declaration which defines a community trust as a trust that has the sole and dominant purpose of receiving, managing or distributing income that has been created from Indigenous held land applied for a community purpose'. However, greater clarity on this issue is needed. Native title is arguably an interest in land analogous to the definition provided by s 4B of the Aboriginal and Torres Strait Islander Act. Community purpose includes*

*a purpose that is intended to benefit primarily members of a particular community or group which is broad enough to include activities such as economic development.*[22]

64. In the alternative, distributions or payments to individuals of up to a pre-determined capped amount should be excluded from the income test and social security thresholds imposed by the *Social Security Act 1991* (Cth) and relevant supporting legislation. As an integrity measure, these payments could be made subject to the preparation by the recipient of an approved personal plan specifying how the payment will be spent, in order to encourage practical and constructive use of a payment.

65. In the alternative, distributions or payments to individuals should be excluded from the income test and social security thresholds imposed by the *Social Security Act 1991* (Cth) and relevant supporting legislation if they are within the scope of an approved purpose for economic, social, environmental or cultural capacity building and development. As an integrity measure, these payments could be made subject to the preparation by the recipient of an approved personal plan specifying how the payment will be spent, in order to encourage practical and constructive use of a payment.

[22] AIATSIS, October 2008 at page 6.

## Springboard Activities

66. Payments to individual Indigenous persons from Indigenous trusts and other entities are often limited to payments made for the direct relief of poverty. The application of the payments is usually directed at meeting immediate needs (eg whitegoods or emergency travel). Payments to individual Indigenous persons are generally not permitted where the recipient is not in a state of poverty and is instead seeking support to safeguard or enhance their financial position in the longer term.

67. There is interest in introducing a program for the Federal Government and other private entities (whether or not established for the promotion and benefit of an Aboriginal community) to be able to make payments to Indigenous people on a tax exempt or tax concessional basis that are to be specifically applied by that person towards activities that enhance the position of that person beyond the mere relief of poverty.

68. The objectives are to:

    1) encourage Indigenous persons to participate in opportunities that allow them to independently advance their personal interests and standing within the community; and

    2) actively assist Indigenous persons and families who have not necessarily fully established themselves sufficiently within the mainstream economy via activities such as assistance in obtaining home ownership, contributions to superannuation and other relevant economic development opportunities.

<u>Submission</u>

69. It is intended that the recipients of these payments will not be persons who are in receipt of social security benefits.

70. Individual payments should be permitted to be received on a tax exempt or tax concessional basis in the hands of the recipient, with various possible conditions applying:

    (a) the recipient would need to present a personal plan clearly setting out the purpose and proposed application of the payment;

    (b) the use of the funds would need to be practical and constructive;

    (c) certain highly beneficial programs be encouraged through the proposed payment system, for example:

        (i) access to low cost housing;

        (ii) superannuation contributions that are matched or otherwise incentivised; or

        (iii) investment by individuals in appropriate and low-risk investments (eg rental properties),

        with a view to providing for and safeguarding the individual's future.

71. If thought appropriate, the ATO could issue a list of approved activities for which tax exempt or tax concessional payments may be made to an Indigenous person who

can then apply those funds received directly toward undertaking that approved activity. We envisage that such a list might include the above suggestions.

# Engagement of Private Sector – Incentives to Enhance Aboriginal Economic Development

72. The provision of tax concessions and incentives may be a successful means of encouraging investment by the private sector that will enhance the development of sustainable Indigenous enterprises in remote communities.

73. It is envisaged that these incentives would be directed at enhancing Aboriginal workforce participation, skills formation and Aboriginal community infrastructure investment.

74. Other countries have successfully created an attractive taxation environment for investment in new industry, including Ireland and Israel.[23]

75. According to Levin:

> *"Like all growing industries, there needs to be tax concessions that:*
>
> *(i) mitigate the high risks and dangers associated with emerging industries;*
>
> *(ii) provide clear guidelines that clarify the outcomes that are sought to be achieved from those industries; and*
>
> *(iii) provide financial reward for participants for achieving these outcomes."*[24]

76. Proposals to stimulate private sector engagement and investment are beneficial not only for Indigenous communities but also for the private sector stakeholders as well. A building of relationships between the two, and a building of skills and capacity in the Indigenous community benefits industry by providing:

    1) a local source of employees (including improved retention rates); and

    2) local service providers.

77. By way of example, we cite the Australian Government and Minerals Council of Australia's *Working in Partnership Program*, as referred to in FaHCSIA, December 2008 at page 12.

**Availability of Deductions and Losses**

78. Immediate deductions in relation to upfront capital expenditure or ongoing tax losses are recognised for various essential investments including capital works and research and development. Some of these costs lead to deductions in an amount that exceeds the actual costs outlayed by the relevant payer (eg research and development expenditure). There is no such deduction available for expenditure on capacity building in Indigenous communities and Indigenous organisations.

79. Such expenditure is clearly required to provide:

    1) necessary workforce skills to individual members of Indigenous communities;

[23] Levin, August 2007 at page 11.
[24] Levin, August 2007 at page 11.

2) proper governance arrangements to Indigenous communities to allow for the effective management of funds; and

3) appropriate new community infrastructure to foster Indigenous community growth and prosperity.

**Venture Capital Arrangements**

80. There are existing Federal tax exemptions for venture capital investment in emerging businesses via the Venture Capital Limited Partnership and Early Stage Venture Capital Limited Partnership regimes. However, there are no similar concessions provided in respect of Indigenous enterprise and business development. See Native Title Payments Working Group, 2008 at page 10.

Submissions

81. DIA endorses the following proposals and recommendations to the Federal Government.

Availability of Deductions and Losses

82. The proposal of the Native Title Payments Working Group, 2008 at page 11 of:

> *"full and immediate tax deductibility for expenditure incurred on specific capacity building and community infrastructure in indigenous communities, recognising that in many cases this is provided in situations where there is both an absence of government investment and significant market failure. These expenditures should be able to be deducted on a flow through basis against other sources of business income or profits of investors."*

83. The proposal of the Native Title Payments Working Group, 2008 at page 12 of:

> *"granting up front tax income tax concessions similar to the research and development tax deduction/credit for capital investment in Indigenous businesses or enterprise development in Indigenous communities".*

84. The recommendations of the Native Title Payments Working Group, 2008 at pages 15 – 16 that:

> *"Consideration should be given to the provision of full and immediate tax deductibility (on a flow through basis) for expenditure incurred on specific capacity building in Indigenous organisations, key to ensuring the necessary skill base and governance arrangements for the effective long-term management of funds held.*
>
> *Consideration should be given to the provision of full and immediate tax deductibility (on a flow through basis) for expenditure on the establishment of community infrastructure, recognising that industry investment is undertaken in an absence of government investment and where there is significant market failure. Such an approach would recognise that this is essential expenditure, akin to capital works and R&D."*

85. It may also be appropriate to implement a bonus deduction in certain circumstances to encourage appropriate expenditure on Indigenous community activities (eg 125% of the total expenditure)[25]. For instance, such incentives may be appropriate in encouraging private sector investment in the provision of community infrastructure or workforce employment to Indigenous community members.

[25] Levin, August 2007 at page 11.

Venture Capital Arrangements

86. The recommendation of the Native Title Payments Working Group, 2008 at pages 15 – 16 that:

> *"Consideration should be given to the provision of flow through tax treatment coupled with tax exempt income and capital gains for venture capital partners in Indigenous enterprise development, subject to the enterprise meeting minimum Indigenous ownership and equity arrangements."*

87. We envisage that venture capital entities would need to satisfy eligibility criteria based on:

    1) permitted investments in Aboriginal economic development initiatives; and

    2) prescribed minimum equity participation for Aboriginal entities in the venture capital entity, with targets for increasing equity arrangements over time.

88. DIA also endorses the corresponding proposals and examples put forward in FaHCSIA, December 2008 at pages 13 and 16.

89. It is envisaged that the tax incentives supported above will only be available where expenditure is directed towards approved projects including (amongst other things):

    1) capacity and governance development through training, mentoring or otherwise (for example employment of Indigenous persons in venture capital entity activities); and

    2) community infrastructure development within an applicable Aboriginal community.

# Superannuation

90. There is a growing interest among Indigenous communities to utilise the benefits provided to individuals from the superannuation system. Many native title claimant groups are now discussing superannuation as one possible destination for their native title payments. This approach offers two key benefits:

    1) current generations are able to put funds away for their own retirement or old age thus alleviating the burden on the Federal Government welfare system with any unused benefits able to be passed to future generations; and

    2) by alleviating concerns regarding old age, it removes the pressing need of current generations to adequately provide for their own livelihood whilst at the same time seeking to better their communities both now and into the future.

91. A review and possible upgrade of the Australian superannuation system is required in order to ensure that the current superannuation regulatory system is appropriate for Australian Indigenous persons and operates to allow Australian Indigenous persons to take advantage of the benefits of the superannuation system.

92. We submit that there is a change that can be made to the superannuation system to promote the use of superannuation by Indigenous persons.

**Existing Superannuation Concessions – Small Business**

93. The Federal Government has recognised that for small business owners, much of their superannuation is tied up in the small business rather than in a superannuation fund. Accordingly, on the sale of the small business, an individual has an opportunity to receive capital gains tax free proceeds from the sale of the business (where the assessable capital gain derived by the small business owner from the sale of the business is entitled to be reduced by the relevant CGT small business concessions) **and** to contribute the capital proceeds into their superannuation fund up to the "CGT Cap Amount", which at the start of the 2007/2008 financial year was $1,000,000 (this is a lifetime limit for each taxpayer and is CPI Indexed).[26]

94. Currently, a person can contribute the proceeds derived from the sale of a small business (or from the sale of the active assets of or an interest in such a business) into a superannuation fund on a tax preferred basis. To the extent that any capital gain arising from the transaction is disregarded as a result of applying the CGT small business 15-year active asset exemption or the $500,000 retirement concession, the taxpayer can contribute the amount (up to the "CGT Cap Amount") into their superannuation account without the imposition of superannuation "contributions tax" or "excess contributions tax". These contributions are treated in the same way as "non-concessional contributions" for taxation purposes, except that (to the extent they do not exceed the CGT Cap Amount) they will not be counted towards the "non-concessional contributions cap" for the year and so will not give rise to liability for excess contributions tax.[27]

95. These proceeds will not be taxed in the hands of the individual or in the hands of the superannuation fund (when contributed by the individual into their superannuation fund account). However, they are subject to the superannuation rules and regulations

[26] Section 292-105 of the ITAA97
[27] Sections 292-90 and 292-100 of the ITAA97

and can only be accessed subject to normal conditions of release in respect of superannuation.

96. By analogy, native title holders that are receiving payments after many years of negotiations with third parties could be considered to be realising their "superannuation" nest egg and should be accorded similar treatment as small business operators in relation to their ability to apply these funds toward their retirement.

**Existing Superannuation Concessions – Compensation for Personal Injuries**

97. Concessional treatment is also available for payments received by an individual that relate to structured settlements or orders for personal injuries that can be rolled over into a superannuation fund. Where there is a settlement of a claim for compensation or damages for or in respect of personal injuries suffered and the claim is based on the commission of a wrong or on a right created by statute and compensation payments are made in settlement of the claim pursuant to a written agreement, then:

    1) the compensation payment is likely to be treated as non assessable in the hands of the relevant recipient of that compensation payment; and

    2) if that compensation payment is contributed to superannuation then it will not be counted towards that individual's superannuation contributions caps and so will not give rise to liability for excess contributions tax. [28]

98. The analogy between the CGT free treatment for compensation payments arising from personal injury claims and the CGT free treatment for compensation payments arising from native title claims is a strong one and similar superannuation concessions treatment should apply in relation to the contribution of these compensation payments into superannuation.

Submissions

New Superannuation Concession for Recipients of Native Title Payments

99. A change to the superannuation system should be made as follows:

> *"The recipients of native title payments (whether directly or indirectly) be given the right to make contributions of native title compensation payments to a regulated superannuation fund up to an amount equivalent to the CGT Cap Amount [or even an amount that is lower than the CGT Cap Amount, if necessary say $300,000.00] without such contributions being subject to the imposition of contributions tax and without being counted towards the individual's concessional or non-concessional contributions caps so as to give rise to liability for excess contributions tax."*

100. The necessary legislative amendments would be relatively simple.

101. This initiative:

    1) provides an immediate incentive for native title holders to direct payments to their respective superannuation funds without the complications that arise for employers and employees in making superannuation contributions (eg the relevant restrictions on concessional and non-concessional amounts that may be contributed to a superannuation fund);

[28] Sections 292-90(2)(c)(ii)&(iii) and 292-95 of ITAA97

2) treats recipients of native title payments on a similar basis to recipients of compensation payments for personal injuries as well as recipients of capital proceeds on the sale of small businesses; and

3) will galvanise the various stakeholders, including the superannuation industry, to work towards the more detailed review of superannuation that is so needed.

102. The general concept of this initiative has been proposed to the Australian Government by the MCA[29] and we endorse that proposal. MCA noted in support of the proposal that:

> *"this initiative would provide an incentive for Native Title holders to direct payment to their respective superannuation funds without the complications that arise for employers and employees in making superannuation contributions."*

[29] MCA, 2009 at page 9.

## Tax Zoning Incentives

103. There have been a number of successful attempts in countries around the world to create a highly attractive tax environment using tax concessions. Tax deductibility for specific expenditure as well as tax exemption on earnings are tools used to develop successful new industry. Countries like Ireland and Israel are noted for these efforts.

104. In an Australian context, there are specific examples where the Federal Government has sought to reduce the risk to the private sector from investing in particular industries or carrying out particular endeavours in order to incentivise the private sector to engage in those activities. Levin, August 2007 at page 10 noted examples of where industries have benefited from similar types of Federal Government incentives, including:

    1) the film and television sector;

    2) mining and agricultural sector;

    3) non-residents investing in Australia; and

    4) venture capital emerging businesses.

105. There would seem overwhelming justification for concessional tax treatment to be afforded to private sector entities that are prepared to undertake investment in infrastructure and provide essential services and employment within particular Aboriginal communities.

106. One means of encouraging expenditure on these areas has been discussed under the heading "*Availability of Deductions and Losses*" in the section entitled *"Engagement of Private Sector – Incentives to Enhance Aboriginal Economic Development"* above.

107. However various other tax zoning incentives could be provided in addition to or in substitution for the submissions set out under the heading "*Availability of Deductions and Losses*" in the section entitled *"Engagement of Private Sector – Incentives to Enhance Aboriginals Economic Development"* above.

108. It is submitted that the tax zones could be aligned to the 'priority locations' that are being determined for the implementation program of the Council of Australian Government's National Indigenous Reform Agreement.

109. Particular tax zoning incentives that could be provided include the following:

    1) The introduction of a specific categorisation (e.g. identification by way of zoning) of specified Aboriginal community areas that require significant levels of investment and infrastructure development with the view of providing entities who undertake investment in these specified Aboriginal communities (whether by way of the provision of services, construction of infrastructure or employment of persons to provide these services in these areas or otherwise) with taxation and other government impost incentives to undertake these activities. The encouragement of investment in these Aboriginal communities by way of incentive would have the outcome of alleviating pressure on government departments and agencies to provide necessary government services and infrastructure in a timely manner.

    2) These incentives could include:

(i) a rebate of tax, provided to any private sector entity that invests in infrastructure, provides services or employees persons to provide services to these particular Aboriginal community areas;

(ii) as briefly raised under the heading "*Availability of Deductions and Losses*" in the section entitled *"Engagement of Private Sector – Incentives to Enhance Aboriginals Economic Development"* above, additional deductions being provided for particular expenditure undertaken by private sector entities in specified Aboriginal community areas (e.g. 125% of relevant expenditure incurred on the provision of essential infrastructure, the employment of persons or performance of services provided in that particular Aboriginal community area); and

(iii) upfront deductibility of costs incurred in establishing businesses that will provide services to, employee persons who will perform services in or undertake investment in providing infrastructure to, particular Aboriginal community areas.

3) A tax rebate, in addition to the current Zone A and Zone B rebates provided for residents working in isolated areas, that is provided to any individual who performs personal services (whether as employees or contractors) in specified Aboriginal community areas, whether or not those individuals are living in the specified Aboriginal community area and whether or not that individual also receives a Zone A and Zone B rebate:

(i) in relation to this rebate of tax, the quantum of the rebate of tax could be higher for Indigenous individuals who perform personal services in these specified Aboriginal community areas as opposed to non-Indigenous people who provide services in these particular Aboriginal communities;

(ii) this higher rebate of tax would provide Indigenous persons with an incentive to pursue meaningful employment or service related work in these specified Aboriginal communities;

(iii) as Indigenous persons generally may be unlikely to be deriving significant income from other activities, providing Indigenous persons with an additional rebate of tax otherwise payable on income derived from providing personal services in specified Aboriginal community areas would provide an additional and practical incentive to Indigenous people to undertake services in these particular Aboriginal community areas; and

(iv) likewise, the provision of a rebate of tax for non-Indigenous persons performing personal services in specified Aboriginal community areas would provide non-Indigenous persons with an additional incentive to undertake work in these remote areas. This will also greatly assist in attracting appropriate skilled labour and skilled professionals to perform services in these areas which will greatly assist in the development of appropriate infrastructure and capacity development in these areas.

Submission

110. The DIA endorses the following proposals to amend the taxation legislation to introduce the following tax zoning incentives:

1) Any or all of the following incentives:

   (i) a rebate of tax provided to any private sector entity that invests in infrastructure, provides services or employees persons to provide services to these particular Aboriginal community areas, which may include for example, any locations identified by COAG as priority locations;

   (ii) additional deductions being provided for particular expenditure undertaken by private sector entities in relevant Aboriginal community areas (e.g. 125% of relevant expenditure incurred on the provision of essential infrastructure, the employment of persons or performance of services provided in that particular Aboriginal community area), which may include for example, any locations identified by COAG as priority locations; and

   (iii) upfront deductibility of costs incurred in establishing businesses that will provide services to, employee persons who will perform services in or undertake investment in providing infrastructure to, particular Aboriginal community areas, which may include for example, any locations identified by COAG as priority locations.

2) A tax rebate, in addition to the current Zone A and Zone B rebates provided for residents working in isolated areas, that is provided to any individuals who perform personal services (whether as employees or contractors) in specified Aboriginal community areas, whether or not those individuals are living in the specified Aboriginal community area and whether or not that individual also receives a Zone A and Zone B rebate.

   We also endorse the proposal that the quantum of the rebate of tax be set higher for Indigenous individuals who perform personal services in these specified Aboriginal community areas as opposed to non-Indigenous people who provide personal services in these particular Aboriginal communities.