



FAQ – Heiltsuk Tribal Council Settlement Individual Tax Implications

1. If I live on reserve, will the settlement distribution I receive be taxable?

It is our opinion that the settlement amount received by First Nation individuals living on reserve will not be considered taxable.

S.81(1) of the *Income Tax Act* defines amounts not to be included in income. S.81(1)(a) states that statutory exemptions (including First Nation individuals) are not to be included in income. Statutory exemption includes S.87(1)(b) of the Indian Act for income situated on reserve.

2. If I live off-reserve, will the settlement distribution I receive be taxable?

It is our opinion that the settlement amount received by First Nation individuals living off reserve will not be considered taxable.

CRA Technical Interpretation 2014-052851117 states that distributions from a First Nation band to its members is generally considered **not** to be taxable as this type of distribution is categorized as a “windfall” payment.

Generally, if it is merely the choice of HTC to make such distributions, as opposed to being a term of the settlement, it is our view that payments received by the members of HTC, including any interest income earned on these distributions while the funds are held by HTC, would not be included in calculating their income under Part I of the Act.

3. Are there any steps to take to reduce likelihood of paying tax if distributed off reserve?

No – it is our opinion that they are not taxable, and no further steps are required.

Ensuring that the distributions to members living on and off reserve remain consistent with that of windfall or payment not from a source under S.3(a).

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4. **If collecting Social Assistance, will my settlement payment affect the amount I receive?**

No, it is our opinion that it will not affect your Social Assistance.

The distribution is not considered income for tax purposes and will not affect a Member's ability to collect any form of income assistance from the Province of British Columbia or other government entity or organization.

5. **If collecting EI, will my settlement payment affect the amount I receive?**

No – it is our opinion that if you are collecting Employment Insurance Benefits (EI), your settlement payment will not affect the amount of EI you receive.

The amount of EI received is based on average insurable weekly earnings. With the distributions not being considered taxable, the amount received will not be reflected in the calculation of average insurable earnings nor will the payment be construed as income from employment that is reportable to Service Canada while on EI.

There is a Social Benefit Repayment for EI is based on an individual's net income before adjustments.

It is our opinion that the Distribution is not considered income and the amount received will not be added to net income of the taxpayer in the filing of their personal tax return.

6. **If collecting Disability, will the settlement affect the amount of Disability payments received?**

No, in our opinion it will not affect your Canada Pension Plan (CPP) disability payments.

It is our opinion that the distribution is not considered income. The income threshold for CPP Disability amounts will not be affected.

We cannot comment or provide an opinion on individual disability plans outside of the above referenced opinion on CPP Disability payments.

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7. If I am collecting OAS, will my settlement affect the amount I receive?

It is our opinion that the settlement will not affect the amount of OAS that you receive.

As the distributions to member are exempt from tax, they are not included in the calculation of “adjusted income” under S.180.2(1) for the purpose of Old Age Security Clawback.

8. If I am collecting CPP, will my settlement affect the amount I receive?

It is our opinion that if you are collecting CPP, the settlement will not affect the amount of CPP that you receive.

CPP payments are based on a variety of factors, including how much an individual pays into CPP over their lifetime, how many years worked and the age an individual starts receiving CPP, but current years income – whether taxable or not, has no affect on the amount of CPP received.

9. If I am on or collecting wage-loss benefits from WorkSafe BC, will my settlement affect the amount I receive?

It is our opinion that if you are collecting work-loss benefits, the settlement will not affect the amount of work-loss benefits that you receive nor will it be reportable to WorkSafe BC.

10. When a child turns 19 and gets payment from Minor Trust, is that taxable to the adult child?

It is our opinion that the settlement amount itself as well as any income earned on the settlement amount, if that income is already taxed in the trust, when paid out to the adult child, will not be taxable.

It is our opinion that if funds from the settlement are put in trust for the benefit of minor children, with the intention to distribute the funds to children as they reach the age of 19, the capital (original amount contributed to the trust) would not be taxable to the now adult children as it is a capital distribution from a trust to its beneficiaries.

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10. When a child turns 19 and gets payment from Minor Trust, is that taxable to the adult child? (continued...)

There have been several income tax rulings over the years that have deemed per capita distributions to members from trusts as being exempt from tax due to the income not being from a source under S.3(a), including 2005-0126261R3 and 2014-052851117.

11. If/when members receive payment from a Legacy Trust, is that taxable?

It is our opinion that the settlement amount itself as well as any income earned on the settlement amount, if that income is already taxed in the trust, when paid out to the members by way of a Legacy Trust will not be taxable.

Similar to the above question - secondary income would generally be taxable in the trust to the extent that it is not paid or payable to the beneficiaries of the trust. The after tax income left in the trust upon the payment of tax by the trust would form part of the capital of the trust and would be available to be paid out to the beneficiaries free of tax in future years.