IPTI Xtracts

Property Tax and Assessment News from Around the World

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Contents

An accountant's guide to property tax assessments across Canada

There are key differences in provincial approaches to appeals

As I promised in part two of this series on accounting firms, their clients and municipal property taxes across Canada, I'm going to share my thoughts on how the assessment and appeal process differs across Canada. I've managed hundreds of client files across the country over the years and dealt firsthand with the different approaches taken by our provinces and territories.

Alberta, Manitoba, Saskatchewan: In my experience, these provinces are extraordinarily client-focused. Assessors generally can be easily contacted to sort things out without the need for legal representation or to file an appeal.

On one of my Saskatchewan client files, for example, we filed an appeal a day before deadline.

The assessor involved reached out to me the next day and said, "John, I hate appeals, why didn't you just call me?" So, I told him the issues, which in this case were factual and easy to identify due to a technical error, and the next day he strikes 30 per cent from the assessed value!

Now, bear in mind this positive outcome was only achieved because I and the client had done our homework to have all our facts in order and well-presented — such due diligence is critical regardless of the jurisdiction in question or how burdensome its appeals process may or may not be.

British Columbia: BC requires formal appeals, similar to Ontario, but is more comparable to Saskatchewan in that it is quite client friendly. Assessors are accessible and formal legal representation is not required to file an appeal. This helps to expedite the resolution of an issue in a reasonably quick and cost-effective manner.

B.C. is also one of those jurisdictions with a 12-month assessment cycle, versus Ontario, where assessments roll out on four-year cycles. New assessments come out every fall and property owners have only until the end of January to file an appeal. If your client has property there, they must be organized.

Ontario: This is the most challenging jurisdiction in Canada. It is difficult to get an assessor to take a second look at an assessment without filing an RfR or a full appeal. A property owner can file an appeal directly themselves, but unless they are working through an agent or representative (such as their property manager), then they will have to retain a lawyer or paralegal.

Quebec: Legal representation is not required and assessors tend to be very organized and reachable. They do, however, tend to follow the letter of a strictly rules-based system that can be challenging for the layperson to navigate.

The Maritimes: As a whole, assessors in these jurisdictions tend to be responsive and accessible but you will almost always have to file an appeal first before speaking with them. No legal representation is required in these provinces unless a file becomes very contentious and the issues become legal versus valuation in nature. As an aside, I once mentioned to an assessor in New Brunswick how efficient they were to deal with. The comment back was, "We're a poor province and can't afford to be inefficient like Ontario."

The Territories: In Canada's North, you will find a client-centric and accessible approach comparable to what is common to Western Canada.

How accountants can help their clients

As a chartered professional accountant, you can provide added value to your client and facilitate the process in several ways. As I mentioned in my previous post, if your accounting firm has a number of clients with revenue-generating properties, consider creating a matrix or database that tracks which client is up and which is down — this trendsetting and benchmarking may make it easier to flag outliers that may warrant a closer look.

CPAs have the professional experience either to work with the assessor directly or with an appraiser who can assist in evaluating their clients' properties. If there is reason to suspect a valuation issue, the accountant can work with an appraiser they know to confirm if there is a case to made, to build that case and to determine a resolution.

In most provinces, an accountant can represent the property owner in assessment matters and to mount an appeal. Getting to know the local assessor, and developing that relationship with a third-party appraiser, is key to being as effective in this role as possible. As stated above, to serve as the representative of a property owner in Ontario, you will have to cultivate a similar relationship with a lawyer or paralegal, since, in this case, legal representation is a requirement of the appeals process.

The key advice an accountant can give their client when engaging with an assessor is to keep calm, keep cool and talk about the issue with their assessment, not their property tax bill. Come forward with solid facts to support the case — this is how you can ensure the assessor will give your client a fair hearing.

ALBERTA

Supreme Court Dismissal Confirms Unpaid Linear Property Tax Claims In Alberta Will Remain Unsecured

The Supreme Court of Canada (SCC) has dismissed the application of three Alberta municipalities seeking leave to appeal the decision of the Alberta Court of Appeal (Court of Appeal) in Northern Sunrise County v Virginia Hills Oil Corp, 2019 ABCA 61. The dismissal confirms that no special lien attaches to claims for unpaid linear property taxes1 under Alberta's Municipal Government Act (MGA).2 As such, claims for linear property taxes remain unsecured claims under the Bankruptcy and Insolvency Act (BIA).3

The SCC refused to reconsider the Court of Appeal's decision that section 348(d)(i) of the MGA does not provide for a special lien on land for unpaid linear property taxes. The provincial legislature must clearly redraft this section to remove ambiguity if it is the legislature's intention for a special lien to attach to claims for unpaid linear property taxes.

The dismissal indicates that the issue of Albertan municipalities' inability to collect unpaid linear property taxes is not an issue of national importance warranting the SCC's intervention. Lost revenue arising from a municipality's inability to take priority over secured claims for unpaid linear property taxes in insolvency proceedings appears to be a uniquely Albertan problem arising from Alberta's municipal taxation scheme. By denying leave, the SCC has confirmed that the Court of Appeal's interpretation of the MGA does not have obvious repercussions on the linear property taxation schemes of other provinces.

Absent statutory reform, the SCC's refusal to grant leave provides a definitive answer to secured lenders in Alberta that linear property tax arrears will not affect net-recovery of a secured claim in an insolvency proceeding.

Inversely, this refusal confirms that municipalities' claims for unpaid linear property taxes remain unsecured under the BIA. This will continue to greatly affect the income of municipalities that rely on linear property taxation for their tax assessment base.

The burden is now shifted to the provincial legislature to grapple with the public policy repercussions of Albertan municipalities' inability to take priority over secured claims in insolvency proceedings for unpaid linear property taxes. The SCC's refusal to grant leave confirms that no court will intervene to grant a special lien on property in Alberta for unpaid linear property taxes unless legislation expressly and unambiguously provides for such a lien.

Footnotes

1.Linear property is defined under the MGA to include, among other things, electric power systems, street lighting systems, telecommunications systems and pipelines that do not include land of buildings.

2.See Torys' bulletin "Linear property tax claims are unsecured in Alberta".

3.See Torys' bulletin "Alberta clarifies status of linear property tax claims under Bankruptcy and Insolvency Act".

NEWBRUNSWICK

PCs, businesses rally against property tax changes for heavy industry

Irving Oil and the New Brunswick government squabbled for years over whether the company should get a property tax exemption for some storage tanks in Saint John. The exemption went into effect in 1980 and has stayed put ever since.

The proposal to end or reduce property tax exemptions for large industry in the province appeared dead on arrival Wednesday.

Just as two days of hearings on the issue were getting underway, Finance Minister Ernie Steeves told reporters that he opposes the concept.

"It's not a good bill," Steeves said. "I'm against it."

He called the idea "a business crusher" that would hurt small businesses and farmers.

Minister fears for pizza makers

"It could be taxing farmers for the tractors they use every day. It could be taxing people in pizzerias. Their pizza ovens are going to get taxed."

While Steeves mistakenly referred to the proposal as a bill, it's actually a non-binding motion being studied during two days of hearings by the legislature's law amendments committee.

Because the Progressive Conservative government lacks a majority in the house, the three opposition parties could pass the motion.

But the motion, essentially an expression of the legislature's opinion, doesn't have the same legal weight as legislation. And it appears the government has no plans to heed it if it passes.

"New Brunswickers expect us as a government, whether we're a minority or a majority, to certainly make sure that we're making decisions that best reflect the interests of New Brunswickers," said Progressive Conservative Glen Savoie, the Saint John East MLA .

"I believe this is regressive, I believe this would hurt New Brunswick businesses and the economy, and ultimately the province's ability to pay for the services that our taxes go toward."

Saint John Harbour Liberal MLA Gerry Lowe, who introduced the motion, acknowledged his proposal is unlikely to be enacted but said the two days of hearings were still important.

"All I wanted was dialogue and that's what I think these two days are going to bring," he said.

Lowe said that Steeves's claim about the impact on farmers was not true.

"That's bullshit," he said. "We're not talking about that. We're talking about heavy industry. We're not talking about machinery that moves, and he knows that."

Extra revenue could help city

Lowe originally introduced a private member's bill to include heavy industry's machinery and equipment in their property tax assessments.

He said the extra revenue from large plants in Saint John would allow the city to reduce taxes for residents and reduce the number of people moving to outlying municipalities.

But tax bills can only be introduced by governments, so Lowe withdrew his bill and brought the idea back in a motion to reconsider all property tax exemptions for large industry.

A who's who of corporations and business organizations was lined up to argue against the proposal at the hearings.

Louis-Philippe Gauthier of the Canadian Federation of Independent Business compared the measure to having tax assessors enter a resident's house to add their furniture, appliances and big-screen televisions to their property assessment.

"No citizen would allow that to happen, so why are we even considering it for businesses?" he told reporters.

Unintended consequences

Provincial civil servants also warned that the proposed change could lead to unintended consequences.

Peter Kieley, the assistant deputy minister of finance for fiscal policy, said it would represent "a big change" for the assessment system, requiring expertise and training not available now in the province.

Municipalities that received a revenue windfall from adding equipment to assessments "would likely see reduced funding through the other formulas" for provincial funding, "so there's always that other shoe when we look at this from a property tax perspective."

No provinces from Ontario eastward tax equipment and machinery, and if New Brunswick decided to do it, it might reduce investment in the province, he said.

"It's a competitive marketplace, and businesses, if they are taxed too high in one jurisdiction, will take their business elsewhere," he said.

Non-competitive

That argument was echoed by J.D. Irving Ltd., whose officials told the committee that their Saint John properties are not getting a break on property taxes when compared to plants in neighbouring provinces.

Irving Pulp and Paper vice-president Mark Mosher also said that with machinery and equipment making up 85 per cent of the value of some plants he runs, taxing them would make them "completely non-competitive."

Two MLAs on the committee focused on one tax exemption in particular: a 1980 law that removed Irving Oil's Saint John storage tanks from the assessment system.

Green Party Leader David Coon said that law was a response to an oil crisis in 1979 and "clearly was intended as a temporary measure," yet it remains in place four decades later.

People's Alliance MLA Rick DeSaulniers, whose party usually votes with the PCs, also suggested that the exemption be repealed.

When provincial officials told him it applies only to provincial property tax revenue and the City of Saint John receives tax revenue from the tanks, DeSaulniers said the province should repeal regardless and turn over the new revenue to the city.

ONTARIO

Vaughan gets $2.3M for its schools after tax policy change

Is it good news for schools?

Dr. Almos Tassonyi, executive fellow, The School of Public Policy, University of Calgary, says the City of Vaughan raising its taxes on vacant and excess land won't yield any major revenue for education. He also says this policy is to spur more use of these lands for economic growth.

The decision to halve the discount on excess and vacant land for both commercial and industrial businesses is bringing some extra money for schools in Vaughan.

Like other municipalities that have applied the provincially determined tax rate to property values (including businesses) to determine the amount of education taxes payable, this past June Vaughan changed a policy initiated in 1998.

For more than two decades, owners of vacant and excess commercial and industrial properties in Vaughan had 30 and 35 per cent discounts, respectively. Now, it’s halved.

Almos Tassonyi, a research associate with the International Property Tax Institute, says this won’t be a “big increase” for education funding in Vaughan, but might affect some landowners “very specifically.”

When asked if this means more money for schools, the city’s financial services department told the Vaughan Citizen, “Yes, technically these subclasses will be paying more education tax,” citing the increase in levy to 2019 is not necessarily due to any change in tax policy but “by growth (of) the number of properties.”

So far, Ontario's finance ministry is “phasing out the education portion of the vacancy programs” to “ensure the education portion of the vacancy programs is consistent with municipal tax decisions.”

“As a result of the phase-out, the change in the vacant and excess land reduction for York Region is estimated at $4.5 million in 2019, of which $2.3 million relates to the City of Vaughan,” said Scott Blodgett, spokesperson for Ontario's finance ministry.

The reason behind Vaughan’s lion’s share is because “half of York Region’s commercial and industrial properties are located in Vaughan.”

Vaughan isn’t alone.

So far, municipalities who have “implemented these changes,” represent more than three-quarters of all business properties in Ontario.

Tassonyi, who says cities such as Toronto and London, for example, have long tried to reduce these discounts, interprets the policy as a way to “increase revenue in a quiet, small way.”

After all, up to $11 million was collected in 2018 for education from vacant and excess land in the commercial, industrial class from the approximate $300-million budget coming from property tax.

"One of the major policy rationales is that if you have a vacant property, rent it, or if you have excess land, use it, and the other is that taxpayers have been subsidizing those landowners and holdings," said Tassonyi, who is also an adjunct lecturer with the geography and planning department at the University of Toronto.

"This issue has been kicking around for quite a long time in the sense as to whether there is merit to maintain this discounting of the education tax rate for vacant and excess land."

"The argument against is reasonably strong," he continued. "The assessed values of properties are affected by the extent to which they are vacant, and there isn't a strong need for provincial education finances to subsidize the holding of excess land."

Blodgett, meanwhile, said "after accounting for this change and adjustments related to the phase-in of assessment increases, the 2019 commercial (business education tax) BET rate for York Region was decreased by 3.6 per cent and the industrial BET rate by 5.5 per cent from 2018."

To explain this, Tassonyi said, "as the size of the assessment base grows in any particular municipality, rate reductions have taken place, the size of which is dependent on the amount of revenue to be raised. That is to say, if revenue neutrality is to be maintained, the rates will be reduced sufficiently to offset the average rate of growth of the whole assessment base."