



Developments in
Property
Assessment &
Municipal Taxation

2018 AMCTO Annual
Conference

June 11, 2018

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Overview

1. Amendments to *Assessment Act*
2. New Assessment Review Board Procedures
3. *Municipal Act 2001/City of Toronto Act 2006*
4. Transient Accommodation and Vacant Unit taxes

Amendments to Assessment Act

2017

Regulations may permit property classes or subclasses to apply differently in different municipalities, or portions of municipality, and allow municipalities to create additional requirements or provide that prescribed requirements do not apply for land to be included in a class or subclass or some portion of it.

Minister may create additional subclasses.

Amendments to Assessment Act

2018

Regulation power expanded to include procedures for determining values in optional class or subclasses and to enable municipalities to specify individual properties that are in a property class or subclass.

New property tax exemption for land used as a non-profit child care in location that would be exempt if occupied by owner.

Valuation date for 2021-2024 cycle is January 1, 2019 (rather than January 1, 2020)

New ARB Procedures

- New ARB's Rules of Practice and Procedure came into effect April 1, 2017
- Practice Directions and guidelines found on the ARB website: <http://elto.gov.on.ca>
 - Disclosure Guideline
 - Disclosure Schedule
 - Guide – How to Interpret the Schedule of Events for General Proceedings
 - Motion to Request Disclosure Form
 - Expedited Board Directions Form

Schedule of Events

- Schedule of Events Timetable is based on Commencement Date as established by the ARB after consultation.
 - appeals distributed evenly over 38 months with Commencement Dates starting November 15, 2017, and ending December 15, 2020
 - all appeals related to a property assigned the same Commencement Date (e.g. tenant appeals in shopping centres)
 - properties with open 2012 base year appeals were prioritized with an earlier Commencement Date

- approximately 700 properties (with all corresponding appeals) are scheduled to commence each month.
- MPAC, as a respondent to each appeal has structured its resources around the appeal schedule.
- Requests to work outside of the schedule set by the ARB will be reviewed in consideration of workload and capacity and consider impacts on meeting the timelines set by the ARB

Disclosure

- new disclosure obligations for MPAC and expanded disclosure requirements for all parties
- MPAC has an obligation to provide initial disclosure, not defined in the Rules
- However, rule 45 provides that all parties must provide a copy, in paper or electronic form, of all relevant documents in their possession, control or power to all other parties in the proceeding, except for privileged documents

- MPAC and ARB have interpreted this to mean that disclosure must relate to an issue that is in dispute. Those issues are identified through the parties' Statements of Issue, Response and Reply, which are exchanged in accordance with the Schedule of Events Timetable
- At its initial disclosure stage, MPAC is not aware of the issues to be raised

- MPAC's Initial Disclosure documentation therefore provides a property owner with sufficient information to understand the valuation methodology applied to determine the value returned on the roll and allows the appellant to develop and deliver adequate Statements of Issues

- Initial disclosure includes:
 - Methodology Guides
 - Market Valuation Reports on how an assessment methodology and market data are applied to value property generally
 - Property specific valuation information including Property-Specific Assessment Details (PSAD), Rental Addenda and Sales Addenda (on request)

- ARB established a Disclosure Committee which developed a non-exhaustive list of disclosure items which are considered to be relevant and therefore should be routinely exchanged
- Requests from appellants for additional disclosure may include commercially sensitive and confidential information, such as:
 - Sales data, that is subject to a licensing agreement, or proprietary information protected under Section 53 of the *Assessment Act* (actual income & expense information)

- MPAC has an NDA it requires a requesting party to execute before the sales data can be released
- Appellants and municipalities are required to file a motion and execute standard form NDAs prior to receiving section 53 information

Timetable

Schedule of Events

Weeks following Commencement Day November 15, 2017	Event	Time period to complete event
Weeks 1 to 4	MPAC provides initial disclosure to all parties	December 13, 2017
Week 5	All other parties must request any additional disclosure from MPAC	December 20, 2017
Week 6	MPAC to advise other parties if it disputes a request for disclosure	December 27, 2017
Weeks 7 to 9	Motion for Disclosure completed (if required); MPAC provides any additional required disclosure	January 17, 2018
Weeks 10 to 21	Each Appellant provides its disclosure and Statement of Issues to all other parties	April 11, 2018
Weeks 22 to 24	Each party who responds to request inspection or additional disclosure	May 2, 2018

Schedule of Events

Weeks following Commencement Day	Event	Time period to complete event
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November 15, 2017

Weeks 25-29	Objections to requests for inspection or additional disclosure resolved by motion	June 6, 2018
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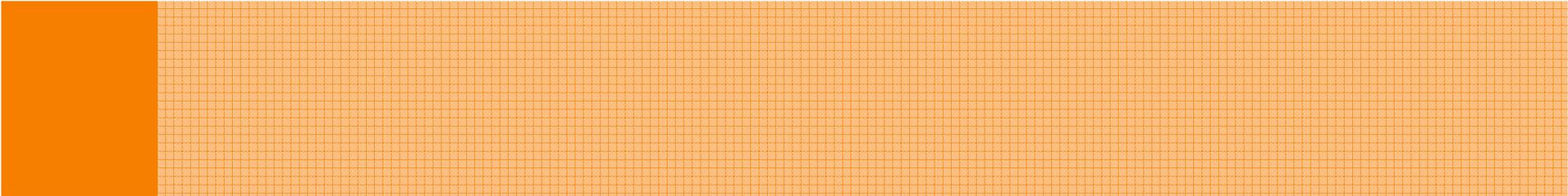
Weeks 30-34	Completion of inspections, additional disclosure	July 11, 2018
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Weeks 35-46	Parties who respond to provide Statement of Response and supporting disclosure	October 3, 2018
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Weeks 47-50	Appellants to provide Reply and supporting disclosure	October 31, 2019
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Weeks 50-62	Parties to complete mandatory settlement meeting and provide reporting documentation to ARB	January 23, 2019
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Weeks 63-66	If not settled, each party to file necessary hearing documentation with the ARB	February 20, 2019
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Schedule of Events

Weeks following Commencement Day	Event	Time period to complete event
November 15, 2017		
Weeks 67-78	Appellant to serve expert reports and amend Statement of Issues if necessary	May 15, 2019
Weeks 79-95	Responding parties to serve expert reports and amend Responses	September 11, 2019
Weeks 96-102	Appellant to provide reply reports	October 23, 2019
Weeks 103-106	If no settlement, file with the Board hearing documentation, request for mediation, if consent, Settlement Conference Brief	November 20, 2019

- Where no settlement, the ARB schedules and holds a Settlement Conference to schedule a mediation, if not occurred, or provides directions and schedules a hearing.

Shorter Schedule of Events for Summary Proceedings

- All proceedings are general unless ARB specifies it as summary (e.g. residential, vacant land)

Schedule of Events		
Weeks	Event	Time period to complete event
Weeks 1-4	Complete exchange of disclosure	4 weeks
Weeks 4-12	Parties schedule and complete mandatory settlement meeting and advise ARB of request for hearing in person or longer than 2 hours	8 weeks
Weeks 13-15	File with ARB all documents and written submissions	2 weeks

- The ARB then schedules a hearing (40 % by Telephone Conference Call)

Rules of Procedure of note for municipalities

Lower tier municipalities are statutory parties

- Rule 4 - Ensure just, most expeditious and least expensive determination of procedure
- Rule 5 - Rules applied in a manner proportionate to importance and complexity with a view to resolving appeals within 4 year cycle [except commencement dated 2019 and 2020!]
- Rule 24 - Dismissal without a hearing – no jurisdiction; frivolous, delay, reasons not disclosed; no apparent statutory ground; appellant has not responded to ARB request for information, or not complied with the Rules
 - Notice to appellant to permit response

- Rule 26 - Late appeals accepted if mailed within time set out in *Assessment Act* or if entitled to appeal and did not respond within 30 days of becoming aware of assessment
- Rule 36 - All filings with ARB must be electronic unless directed otherwise
- Rule 39 - If a municipality does not serve a statement of response by the deadline, it is deemed not to oppose any future settlement.
- Rule 40 - Nature of change sought in property classification or higher assessment only required for summary proceedings within 30 days of commencement date; however, for others, presumably must be set out in the Statement of Issues (if municipality is appellant) or the Response, which cannot be amended without parties' consent or Board order.

- Rule 65 - Motion in writing, unless directed otherwise
- Rule 69 - Minutes of Settlement – to be drafted within 60 days of advising ARB that the matter is settled, executed by all parties within 90 days and filed with the ARB within 7 days
- Rule 70 - If a municipality does not sign within this time frame and all others have, the ARB may issue a decision implementing the Minutes of Settlement if requested by a party.
- Rule 72 - Appeals may be withdrawn as of right unless notice of intent to seek higher assessment or class has been given pursuant to the Rules or hearing convened, or with leave of ARB if notice has been given.

Assessment Appeal Issues for Municipalities

1. Sales of property near valuation date: validity, ASR equity
2. HABU (Highest and best use)
 - impact of *Planning Act* changes
3. FSIU (Fee simple if unencumbered value)
 - impact of rent control
 - social housing
4. Palpable Errors (s. 40.1 *Assessment Act*)
 - recent caselaw
 - *Wellington (County) v. St. Marys Cement; MPAC v. Guelph (Grand River) C.A.*

Tax Applications and Rebate Programs

Municipal Act, 2001 and City of Toronto Act, 2006

- Property tax relief generally takes form of grants, reductions/rebates/refunds (RRRs), or deferred taxes.
- Municipalities are generally prohibited from granting assistance ("bonuses") to businesses, but subject to that restriction, may make grants to any persons for any purpose that council considers to be in the interests of the municipality or grant reductions to "capped" classes. [MA s. 106/107; COTA s. 82/83]

- RRRs are mandated for ITA registered charitable entities which occupy property in the commercial or industrial tax classes, for at least 40% or other prescribed amount, upon application being made. A municipality may at its option provide for greater amounts of RRRs to organizations similar to eligible charities for up to 100% of their taxes. [MA s.361, COTA s.327]

- RRRs may be granted for "change events" that occur in a year that would lower tax rates, if property becomes vacant or excess land or exempt, is razed or demolished or damaged so as to be substantially unusable , or repairs and renovations prevented normal use for at least 3 months during the year but not vacancy that is or was eligible for vacancy rebates, for sickness or extreme poverty.

- RRRs may be provided for eligible properties (residential, farm, managed forest classes) for unduly burdensome taxes (e.g. not just sickness or extreme poverty) with the municipality to establish application requirements and the filing of financial information. [MA s. 365, COTA s.332]

- For these applications, the deadline is February 28 of the year following the year in issue. Usually forwarded to MPAC and then a council hearing by September 30, at which time the appeal may be made within 35 days of council making its decision, or by October 21 if council fails to hold a hearing. [MA s. 357, COTA s.323]

- RRRs are available for eligible properties in the commercial and industrial classes that qualify as "vacant" for at least 3 months, and initially provided for a rebate of 30% of commercial taxes and 35% of industrial taxes for the time period of vacancy. Municipalities may now phase out vacancy rebates, or give reduced rebates. Many have opted to adjust the rebate percentage; apply declining rates for consecutive applications; exclude taxable non-permanent structures and property types (e.g. shopping centres), labour disruptions and fixturing periods; fix eligible criteria such as minimal square footage and adherence to property standards; or eliminate program as of specified date. [MA s. 364, COTA s. 331]

- RRR programs may be established for designated heritage properties subject to heritage easements or agreements for between 10-40% of the taxes attributable to the designated building/structure or portion of it and land used in connection with the eligible heritage property [MA s.365.2, COTA s.334]. The municipality is to specify the by-law percentage of reduction and the criteria that must The City of Toronto also has a Heritage Grant program that provides up to 50% of the estimated cost of eligible work to conserve or restore elements significant to the heritage attributes of the property (\$10,000 maximum for residential).

- Brownfield remediation tax assistance (BRTA) is available as a result of MA s. 365.1, s. 333 COTA, the *Tax Increment Financing Act, 2006*, and s. 28 of the *Planning Act* which provides for Community Improvement Plan (CIP) grants.
- Eligibility requirements and eligible costs are contained in the legislation and in by-laws. BRTA may be provided for either up to 2 years or until eligible remediation costs have been paid, or up to 3 years or until eligible remediation costs have been paid if the property is also eligible for CIP grants.

- In that case combined BRTA and CIP grants may extend to a maximum of 12 years.
- In addition, the Province through their Brownfield Tax Incentive Program may allow for cancellation of all or a portion of the education property tax for up to 3 years tax as a proportionate match. BRTA is based upon all or a portion of the tax increase resulting from post remediation development, and will not exceed the tax increase in any year for the eligible costs.

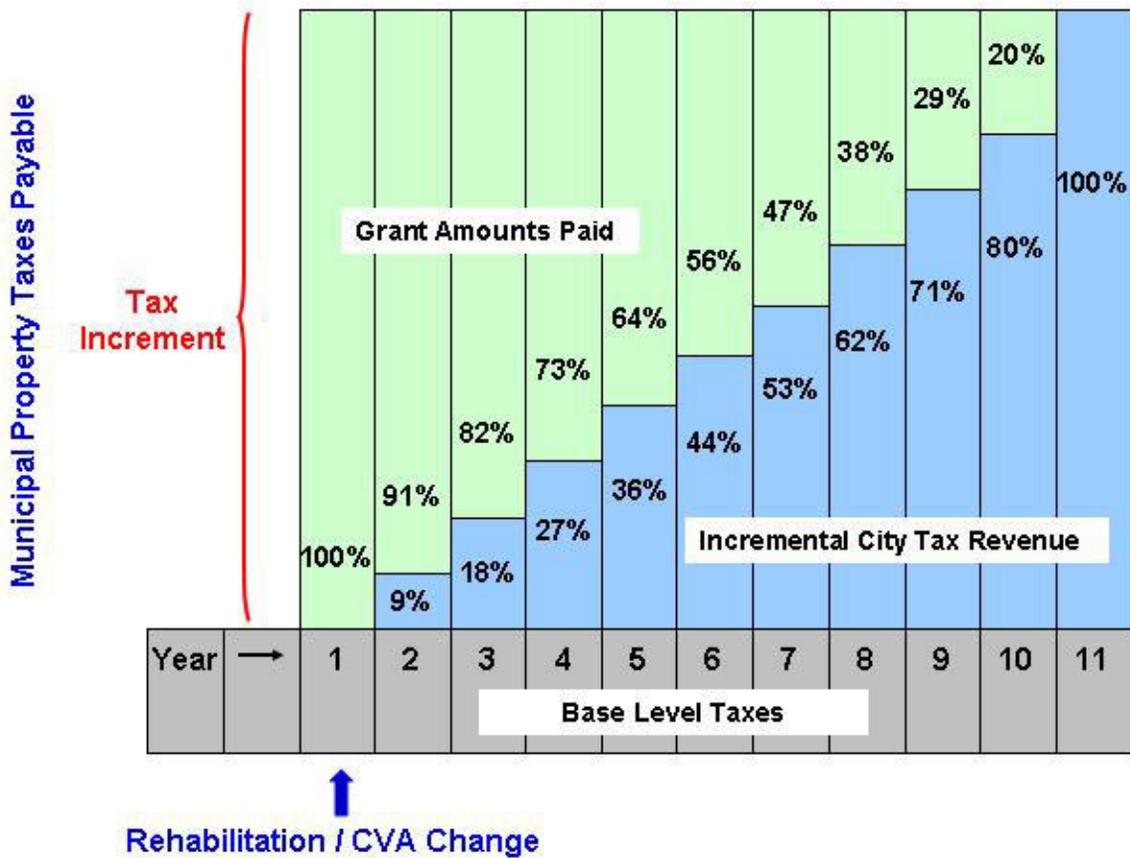
- Some municipalities have instituted a number of additional RRRs.
 - Toronto industrial and commercial water customers may be eligible for a rebate on a portion of the sewer surcharge.
 - The sewer surcharge rebate applies to water not discharged into the sanitary sewer system (for example, water evaporated from cooling towers or used to make a product).
 - The rebate is calculated based on the percentage of water not returned to the sanitary sewer system, and is credited on the water bill based on the sewer portion of the water rate paid.

- Toronto also makes available to eligible industrial properties an industrial water rate, almost 30 per cent less than the general water rate to support the growth of businesses using water for processing purposes and to encourage water conservation.
- Toronto's Eco-Roof Incentive Program provides eligible green roof projects with \$75 / square metre up to a maximum of \$100,000, and eligible cool roof projects with \$2 - 5 / square metre up to a maximum of \$50,000.

- Toronto's Capacity Buy Back program rewards commercial and institutional organizations that reduce water use. It allows the City to buy back water capacity that has been freed up by participants who have reduced water use in their operations, and offers a one-time cash rebate of up to 30 cents per litre of water saved per average day.

- Toronto also has an Imagination, Manufacturing, Innovation and Technology (IMIT) incentive program. This provides eligible developments with an effective overall grant of 60% of the increase in the municipal taxes attributable to the eligible development over a 10-year period as shown in the following graph.

TIEG Grants to Achieve 60% Overall Incremental Tax Grant



- The incentive level for eligible construction of new buildings or substantial renovation of existing buildings in Employment Districts and other designated Employment Areas has been increased to 70% of the increase in the municipal taxes attributable to eligible construction over a 10-year period. When part of a combined Brownfield Remediation Tax Assistance (BRTA) application the incentive increases to 77%.

- The program generally targets the following sectors: biomedical operations, creative industries, financial services, information and communications technology, manufacturing, and tourism attractions. It generally targets the following uses: broadcasting, call centres, computer systems design and services, convergence centres, corporate offices, corporate headquarters, film studio complex, food and beverage wholesaling, office building, incubators, information services and data processing, scientific research and development, software development, and transformative projects.

- Eligibility criteria include location; sector or use; the property must not be in tax arrears;
- Owner must develop an employment plan to support local hiring and/or training;
- Construction must be valued at least \$1 million, meet minimum Toronto Green Standards and not be demolished over the term of the incentive;
- Development must increase the amount of GFA for eligible uses by at least 500 square metres, and constitute a new building, expansion or substantial rehabilitation of an existing building.
- Projects with a cost of >\$150,000,000 must obtain Council approval;
- Applications must be submitted prior to issuance of the main building permit.

Overcharges and Increased Taxes

- Application can be made to cancel or reduce taxes for two preceding years to the year of application in the case of gross or manifest errors that are clerical or factual, but not error in judgement on assessing property, or if the property was subject to an appeal (unless an error was made after the appeal commenced, appeal was by another party, appeal withdrawn before hearing). [MA s. 358, COTA s. 325]

- MPAC must confirm the error and Council must determine the matter by September 30 of the year following the year of application. No appeal provided.
- Municipality may delegate this authority to the ARB
- Treasurer can apply to increase taxes on similar grounds (unless tax certificate issued) no later than December 31 of the year following the year in issue. No time for Council meeting and taxpayer may appeal to ARB within 35 days of Council decision. [MA s. 39, COTA s. 336]
- Municipality may delegate this authority to the ARB

Transient Accommodation Tax

[MA s. 400.1, COTA s. 267(2)5(v)]

- A local municipality may, by by-law, impose a tax in respect of the purchase of transient accommodation if the tax is a direct tax (Toronto – a sales tax)
- Transient accommodation not defined (but defined in *Retail Sales Tax Act*)
- By-law requirements include subject of tax, tax rate, manner and by whom collected (except Crown or Crown agency, unless by agreement), and may also provide for exemptions, rebates, penalties, audits, enforcement

- Government, board of education, universities, colleges, hospitals are exempt
- subject to regulations (O. Reg. 435/17, 436/17) which provide for revenue sharing with destination marketing programs operated by non-profit entities to be used by eligible tourism entities to promote tourism
- Toronto has passed by-law effective April 1, 2018 with 4% tax rate in conjunction with 4% tax on short term accommodation purchases (Airbnb)

Vacant Residential Unit Tax

[MA s. 338, COTA s. 302.1]

- For designated municipalities, tax on vacant units in the residential class is permitted by by-law that must state tax rate and condition of vacancy. Regulations to provide designated municipalities, prescribe conditions and limits, exempt persons and entities, define vacant unit, permit dispute resolution.
- Regulation may be retroactive to January 1 of the year enacted.
- Vancouver model: 1% of assessed value if vacant >6 months based on mandatory self-reporting – costs v. revenue

- Government response to GTA affordability, including provincial non-resident speculation tax of 15% on residential purchases (< 6 residences) in Greater Golden Horseshoe Region by persons who are not Canadian citizens or permanent residents or are foreign corporations and taxable trustees

QUESTIONS?