A Grand Compromise

The Latest North American Property Tax Developments in Sixty Minutes

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Learning Objectives

Identify distinctions between Canadian and American property tax systems

Evaluate recent developments in Canadian and American property tax

Consider whether recent property tax developments create opportunities or exposure for your company or clients
Agenda

1. Key distinctions between the Canadian and American property tax systems

2. Discuss Canadian property tax developments

3. Discuss American property tax developments

4.* Debate the merits of a Stanley Cup playoffs without any Canadian teams
Key Distinctions Between the Canadian and American Property Tax Systems
Key Distinctions Between the Canadian/American Property Tax Systems

- Assessment ratios
- What property is taxable?
- Who administers the property tax?
Canadian Property Tax Developments
# Cross Canada Review - Assessment Cycles

<table>
<thead>
<tr>
<th>Province/ Municipality</th>
<th>Reassessment Cycle</th>
<th>Assessment Notice Mailing Date</th>
<th>Appeal Deadline</th>
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<tbody>
<tr>
<td></td>
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<td>Apr. 30, 2016 - second level (PAAB), $30 filing fee</td>
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<td>Second level - 30 days from mailing date of CARB decision</td>
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<tr>
<td>Alberta - Edmonton</td>
<td>2016 Annual</td>
<td>Jan. 4, 2016</td>
<td>Mar. 11, 2016 - first level (CARB)</td>
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<td>Alberta - rest of province</td>
<td>2016 Annual</td>
<td>Jan. - May 2016 (varies from municipality to municipality)</td>
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<tr>
<td>Saskatchewan</td>
<td>2013-2016 (quadrennial)</td>
<td>Jan. - Mar. 2016</td>
<td>First level (Board of Revision) - 60 days from assessment notice mailing date in the first year of reassessment and 30 days in subsequent three years&lt;br&gt;Second level (Sask. Municipal Board) - 21 days from receipt of BoR decision notice</td>
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<td>Manitoba - Winnipeg (Property &amp; Business)</td>
<td>2016-2017</td>
<td>Jun. for property and Oct. for business assessment of prior year</td>
<td>First level (Board of Revision) - 21 days from assessment notice mailing date&lt;br&gt;Second level (Manitoba Municipal Board) - 21 days from receipt of BoR decision notice</td>
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<tr>
<td>Manitoba - rest of province</td>
<td>2016-2017</td>
<td>Varies but issued in a prior year</td>
<td>Varies by municipality</td>
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<td>2014-2016 (triennial)</td>
<td>Sept.-Oct. of prior first year</td>
<td>Appeal allowed only in the in the first year of the triennial</td>
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<td>Quebec - rest of province</td>
<td>Triennial, varies by municipality</td>
<td>Varies but issued in a prior year</td>
<td>Appeal allowed only in the in the first year of the triennial</td>
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<tr>
<td>New Brunswick</td>
<td>2016 Annual</td>
<td>First week in Mar. 2016</td>
<td>First level (request for review) - 30 days from the billing date on assessment/ tax notice Second level (Assessment and Planning Appeal Board) - 21 days from mailing date of review decision</td>
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<td>2016 Annual</td>
<td>First week in Jan. 2016</td>
<td>First level (request for review) - 30 days from the billing date on assessment/ tax notice  &lt;br&gt; Second level - 14 days from mailing date of review decision</td>
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<tr>
<td>Prince Edward Island</td>
<td>2016 Annual</td>
<td>May 2014</td>
<td>First level (Referral of Assessment) - 90 days from the notice mailing date &lt;br&gt; Second level (Island Regulatory &amp; Appeal Commission) - 21 days from receiving decision notice</td>
</tr>
<tr>
<td>Newfoundland - St. John's</td>
<td>2016-2018</td>
<td>Dec. of prior year</td>
<td>First level (request for appeal) - 30 days from receiving notice &lt;br&gt; Second level (Assessment Review Court)</td>
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<td>Newfoundland - rest of province</td>
<td>2016-2018</td>
<td>Oct. of prior year</td>
<td>First level (request for appeal) - 30 days from assessment notice mailing date &lt;br&gt; Second level (Assessment Review Commission)</td>
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British Columbia

- BC Assessment is a provincial body
- Valuations reflect value as at July 1, 2015,
- Valuations reflect physical condition as of October 31, 2015
- Official assessments to be released first week of January 2016
British Columbia

• Appeals are two levels:
  – Property Assessment Review Panel (Jan 31)
  – Property Assessment Review Board (April 30)

• Physical Condition Date is flexible:
  – If substantial damage between Oct 31 and Dec 31 can’t be repaired by Jan 1, can get relief
British Columbia

• 2016 Residential Values – SIGNIFICANT increase
  – BC Assessment sent warning letters to GVA residents
  – Value increases between 15% and 25% year over year

• 2016 Commercial Values – significant increase
  – GVA (Vancouver, North/West Van, Burnaby, Tri-Cities, New Westminster, Squamish) had high increases to value year over year
  – Land values and market activity drove value increases
British Columbia

• Sample Increases (Class 6):
  – Victoria: 4.6%
  – City of Vancouver: 15.93%
  – City of New Westminster: 8.28%
  – City of Burnaby: 10.99%
  – City of Fort St John: 12.43%

• This does not include light industrial, etc.

• In areas of redevelopment, common increases are 30% to 50%
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• 2016 Commercial & Industrial Values:
  – Vancouver core retail rose 30%-40% in 2015, and again similar increase in 2016
  – East Vancouver industrial area approximately 65% increase
• Need to make sure your properties reflect the correct classification
• Land-averaging only applies to those well above the average (24.2%) – a high overall increase means land averaging unlikely to apply
• Need to make sure one development sale doesn’t drive your market increases
• **Alberta assessments done by City/Region**
  – Total 2014 non-residential assessments were $172B
    • Calgary was $67B or 39%
    • Edmonton was $39.5B or 23%

• **Annual Assessments**
  – Calgary/Edmonton:
    • Base date is July 1 of prior year
    • Condition date is December 31 of prior year
    • Pre-Roll Consultation in October/November
Alberta - Calgary

- Calgary has both a business tax and realty tax
- Realty assessments expected to decrease for certain sectors due to weakness related to oil and gas
  - Assessor indicates 42% of businesses should expect a tax increase, despite an overall assessment decrease of about 4%
  - The overall decrease is largely due to downtown office towers which decreased about 12% (high vacancy)
  - Retail properties overall decreased about 1%
  - Industrial properties increased about 4%
- Typical business assessment is unchanged from 2015 to 2016 despite industry weakness/vacancy reports
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Alberta – Edmonton

- Number of non-residential and apartment buildings: 23,993
- Taxable assessed value: $56.7 billion

Median change in property values:
- Hotel/Motel: +4.9%
- Industrial Condominium: +6.3%
- Industrial: +3.9%
- Office: +0.9%
- Retail: +2.1%
- Retail Condominium: +0.3%
- Retail Plaza: +3.1%
- Shopping Centre: +1.0%
- Special Purpose: +3.7%
- Multi-residential (apartment buildings): +9.0%
Quebec

- Triennial roll, by City
  - 2016 value based on July 1, 2014
  - Can only appeal at the outset of the roll
  - If you are a special purpose property you had to provide guidance on valuation factors within a specific time frame or lose the right of appeal
Quebec

- Appeals in Quebec are costly
- Limited period of review - approximately 6 months from initial assessment notice
- After April 30th, can make an application for a review of the assessment
- The roll should be deposited between August 15 and September 15, unless an extension is requested until November 1
Quebec

- 2016 Sample Cities with New Rolls:
  - Quebec City
    - Non residential properties up 12%
    - Industrial 20.2%
    - Hotels/Motels up 11.1%
    - Retail up between 10.3% and 15.8%
    - Office up between 12.6% and 14.8%
    - Vacant land up 32.5%
  - Vaudreuil-Dorion
    - Longueuil (Brossard, Boucherville, etc.)
      - Multi-Res up 13.3%
      - Commercial & Office up 5.5%
      - Industrial up 6%
      - Vacant Land up 52.8%
Quebec

• 2017 New Roll:
  – Montreal and suburbs
    • Has the majority of value in the province
    • One “kick at the can”
Ontario

• Four year roll, annual assessments
• Last Valuation date was January 1, 2012
• Next Valuation date is January 1, 2016
  – Annual right of appeal
  – Annual tax rebate potential for commercial/industrial properties
    • Vacancy rebate program
    • Demolition/renovation program
On April 18, 2015, the Minister of Finance issued formal direction to MPAC under the authority of section 10 of the Municipal Property Assessment Corporation Act, 1997

The direction, which was published in The Ontario Gazette

Requires MPAC to:

- Develop detailed technical methodology guides that will serve as a useful tool for MPAC’s assessors and explain valuation procedures to stakeholders
- Establish a new advance disclosure process, which will enable impacted municipalities and business taxpayers to contribute to the determination of assessed values in advance of the preparation of the assessment roll
Ontario - Advance Disclosure

• Level 1 - Methodology Guides
  – Comprehensive guides that explain assessment methodology

• Level 2 – Market Valuation Reports
  – Comprehensive reports that explain how assessment methodology was applied at the sector level to value properties for the 2016 Assessment Update

• Level 3 – Property Specific Valuation Information
  – Detailed information that is available through secure access only
Ontario - Advance Disclosure

• Opportunity to pre-negotiate your values will come in Q2/Q3 of 2016
• Focus on tax avoidance rather than recovery!
• Important to provide appropriate information so that you’re not ultimately excluded from the process – could come back to haunt you later!
American Property Tax Developments
Kentucky taxes inventory but exempts personal property stored in a warehouse/distribution center for shipment to an out-of-state destination.

What happens if property shipped out of state eventually returns to Kentucky? What if we know for certain that the property will return?

Kentucky Court of Appeals confirmed that the out-of-state destination need not be the final destination.

 Warehouses, Distribution and Fulfillment Centers
Georgia finally gets smart about E-commerce and expands Freeport

• Georgia law has long authorized counties to adopt exemptions for, among other things, inventory of finished goods destined for shipment to a final destination outside the state; excludes stock in trade of a retailer

  – What if the goods are shipped from the warehouse directly to the end-user?

• HB 935 (2016) expands the Freeport exemption to cover “stock in trade of a fulfillment center’’
Who Is “in” the Energy Sector?
Individual taxpayers score key win in Rhode Island

• Taxpayers built wind turbine on their property; the electricity produced by the turbine was sold directly to an electric utility under a PPA

• Does the turbine qualify for the manufacturing exemption? Are the taxpayers “manufacturers?”

• Rhode Island Supreme Court holds that turbine is exempt because it converts raw materials—wind—into a finished product—electricity; does not matter that electricity was sold at wholesale

Measure 50 Litigation in Oregon
Pitting constitutional protections against administrative action

• In 1997, Oregon voters passed a constitutional amendment that decoupled “assessed value” (AV) from “real market value” (RMV), and incorporated the concept of “maximum assessed value” (MAV)

• AV = lesser of RMV or MAV

• MAV increases capped at 3%/year unless one of six exceptions is met

• “New” property is an exception
Measure 50 Litigation in Oregon
Pitting constitutional protections against administrative action

• Prior to 2009, Comcast’s property was assessed locally, meaning that only its real and tangible personal property was taxed
• In 2009, the Department of Revenue decided to centrally assess Comcast’s property, including its intangibles
• What happens to the MAV of the previously assessed property? The preexisting property?
• Awaiting decision from Oregon Tax Court

Comcast Corp. v. Dep’t of Revenue, TC 4909 (Or. Tax Ct.)
Nonprofit Hospital Exemption Invalidated in Illinois

Lawsuit to establish entitlement to exemption goes sideways

1. Illinois Constitution requires property to be used exclusively for charitable purposes to qualify for charitable exemption

2. Statutory exemption for not-for-profit hospitals applies if the value of the services the hospital provides equals or exceeds hospital’s estimate property tax liability

3. Illinois appellate court said exemption was facially unconstitutional

“Dark-store” Valuation Continues to Irk Authorities
As big-box retailers continue to rack up wins, how will states respond?

“Dark Store” method/technique holds that comparable properties are those that have closed or are vacant

- Free-standing big-box stores are designed to be functionally obsolescent
- Deed restrictions

Why?

- Should the value of a building be equal to the value of the business operating out of that building? Does that get you to FMV?
“Dark-store” Valuation Continues to Irrk Authorities
As big-box retailers continue to rack up wins, how will states respond?

- Taxpayers wins in Indiana, Michigan, Ohio and Tennessee; litigation is ongoing in a number of states, including Alabama
- This is an intensely political issue
- Indiana enacted SB 436 (2015) to curb dark-store valuation by requiring use of cost approach; however, the state repealed that legislation in 2016
- How does the special-purpose doctrine fit in?
QUESTIONS?
Contact Us

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