

EMERGING TRENDS IN MUNICIPAL LAW 2018

Sustainable Revenue Under the Modernized MGA



**BROWNLEE LLP**  
Barristers & Solicitors

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Overview

- Centralization of designated industrial property
- Brownfield tax incentives
- Small business non-residential subclass
- 5 to 1 tax ratio cap
- Provincial Education Requisition Credit



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Centralization of Designated Industrial Property



New Property Type – Designated Industrial Property

Designated Industrial Property is assessed by the Provincial Assessor



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**Centralization of Designated Industrial Property**

**What is Included in the DI Property Type?**

- Facilities regulated by the Alberta Energy Regulator, the Alberta Utilities Commission or the National Energy Board;
- Linear property (pipeline, wells, telecommunications, electric power systems, and railways);

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**Centralization of Designated Industrial Property**

**What is Included in the DI Property Type?**

- Property designated as a “Major Plant” by the regulations (*the 2017 Alberta Machinery and Equipment Minister’s Guidelines*);
- Land and improvements associated with property regulated by the Alberta Energy Regulator, the Alberta Utilities Commission, the National Energy Board, and “Major Plants”.

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**Centralization of Designated Industrial Property**

**What are the Benefits of Centralized Industrial Property Assessment?**

- Improved consistency and equity in the assessment of major industrial property.
- Lower administrative costs for municipalities.
- The costs of assessment of DI property will be paid for by industry.

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### Centralization of Designated Industrial Property

#### Implementation of DI Property

- Provincial Assessor took responsibility for the assessment of DI Properties on January 1, 2018
- Hybrid Assessment Delivery Model



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### Brownfield Property Tax Incentives

#### Brownfield Property – Minimum Requirements (s. 364.1):

- Industrial or commercial property (except designated industrial property); and
- Property that, in the opinion of the municipal council:
  - Is or possibly is contaminated;
  - Is vacant, derelict or under-utilized; and
  - Is suitable for development or redevelopment for the general benefit of the municipality

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### Brownfield Property Tax Incentives

#### Brownfield Property Tax Incentives can be Granted in one of two ways:

- 1) By Bylaw
- 2) By Agreement



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### Brownfield Property Tax Incentives

- Under either stream (bylaw or agreement), the tax incentive may include:
  - i. A full or partial exemption from taxation; or
  - ii. A deferral of tax



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### Bylaw Stream

#### Contents of Bylaw:

- Must identify brownfield properties in respect of which an application can be made
- May set (additional) criteria to qualify for exemption or deferral of taxes



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### Bylaw Stream

#### Contents of Bylaw:

- Must specify the taxation year(s) during which identified properties may qualify for an exemption or deferral
- Must specify any conditions which, if breached, will result in cancellation of the exemption or deferral (and the taxation years in which the condition(s) apply)

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**Bylaw Stream**

**Procedural requirements:**

- Before second reading, Council must give notice of and then hold a public hearing with respect to the proposed bylaw (MGA, sections 606 and 230)

**Administrative requirements:**

- After bylaw is passed, owner of brownfield property identified in the bylaw can apply for an exemption or deferral

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**Bylaw Stream**

**Administrative Process:**

- Application for exemption is reviewed by a designated officer
  - If satisfied that the property meets the requirements of the bylaw, designated officer may issue a certificate granting the exemption or deferral



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**Agreement Stream – Requirements**

- Council may enter into an agreement with the owner of a brownfield property → full or partial exemptions or deferrals of tax
- Agreement must state:
  - i. Taxation years to which the exemption or deferral applies (not retroactive);
  - ii. Conditions on which the exemption or deferral is granted; and
  - iii. Consequences, rights and remedies arising in the event of any breach

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### Agreement Stream – Requirements

- Before voting on a resolution to enter into an agreement of this nature, Council must give notice of and hold a public hearing with respect to the proposed agreement



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### Brownfield Incentives

#### Practical Considerations:

- Council has more direct control over exemptions under agreement stream
  - Downside: investment of Council resources (reviewing agreements, public hearings)
- Bylaw stream may be more efficient but will require more administrative resources
  - Appointment of designated officer, process for vetting applications under bylaw, etc.

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### Brownfield Tax Incentives

- Drafting of the conditions in the Bylaw or Agreement are the **key** to the success of the incentive initiative
- Appropriate mechanisms must be in place to ensure that the municipality can enforce the conditions, and if necessary, cancel the Certificate of Exemption or Agreement if conditions are breached

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**Matters Relating to Assessment  
Sub-Classes Regulation**

Alberta Regulation 202/2017

**Prescribed sub-classes**

**2(1)** For the purposes of section 297(2.1) of the Act, the following sub-classes are prescribed for property in class 2:

- (a) vacant non-residential property;
- (b) small business property;
- (c) other non-residential property.

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**Matters Relating to Assessment  
Sub-Classes Regulation**

- “Small business property” means a property within the municipality that is owned or leased by a business that:
  - i. Is not a designated industrial property
  - ii. Is operating under a business license, or that is otherwise identified in a municipal bylaw
  - iii. Has fewer than 50 full-time employees across Canada, or a lesser number of employees as set out in a municipal bylaw as of the date established by a municipal bylaw

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**Matters Relating to Assessment  
Sub-Classes Regulation**

**Tax Rates for “Small Business Property”**

- Cannot be less than 75% of the tax rate for the “other non-residential” sub-class
- Cannot be more than the “other non-residential” sub-class

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**Matters Relating to Assessment Sub-Classes Regulation**

**Criteria for "Small Business Property" sub-class**

- What is the maximum number of full-time employees, not to exceed 50 full-time employees across Canada?
- What is the definition of a full-time employee?
- What is the effective date of the counting of full-time employees?
- What is the frequency of the count?
- What evidence is required by the business to substantiate the count?

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**Matters Relating to Assessment Sub-Classes Regulation**

**Identification of "Small Business Properties"**

- Data base likely does not exist
- Administrative cost related to building a data base
- Application by taxpayer to be included in the "small business property" subclass
- Deadline must be established for applications
- "Designated Officer" reviews application to determine if "small business property" criteria is met

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**Matters Relating to Assessment Sub-Classes Regulation**

**Implementation of the "Small Business Properties" Sub-Class**

- Likely will not be able to implement the "small business property" sub-class until 2019 tax year as lead-time is required to build data base
- Arguable (better view) that legislation requires specific properties to be identified in bylaw

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### 5:1 Maximum Tax Ratio

- s. 358.1 of the MGA prescribes a maximum tax ratio, whereby the highest non-residential tax rate cannot be greater than 5 times the lowest residential tax rate
- New regulation will specify when non-conforming municipalities must be within the 5:1 maximum tax ratio
- Carefully monitor the status of your tax ratio

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### Provincial Education Requisition Credit ("PERC")

- Applies to oil and gas properties that have had their municipal tax written off
- Retroactive to the 2015 tax year
- PERC operates for 5 years, until the 2019 tax year
- Does not apply to other types of uncollectable municipal property tax

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