Taxation of Vacant Lands: Response to Federal Consultation
Financial and Corporate Services/ Urban Planning and Economy

Edmonton

Introduction

The City of Edmonton is pleased to respond to Finance Canada's invitation to participate in a consultation on the taxation of vacant lands. This submission provides some initial considerations on this topic from Edmonton's perspective. The City would also be pleased to participate in further rounds of consultation, and can provide more specific input as the government's policy objectives and potential options are further clarified.

While the City of Edmonton is not prepared to take a formal position on the proposal at this time, we have identified considerations and questions in terms of jurisdiction, policy, implementation, and financial impact that we hope will provide context and help inform future discussion on the proposal.

Jurisdiction

Alberta's property tax system is governed by the provincial *Municipal Government Act* (MGA) and its associated regulations, but both the assessment and tax functions are administered by municipalities directly (with the exception of designated industrial properties). This is in contrast to other provinces, such as Newfoundland, New Brunswick, Prince Edward Island, Nova Scotia, Ontario and British Columbia, which have established crown agencies to administer property assessment for the entire province. Saskatchewan and Manitoba operate under a hybrid system of both provincial and municipal assessment offices, while Quebec operates under a model similar to Alberta with each municipality being responsible for their assessment. By and large, taxation and tax rates are set by Canada's municipalities, however the provincial legislation under which this ability is enabled varies significantly from province to province. Moreover, the latitude that municipalities have to alter or amend their taxing bylaws is extremely complex, even to the experienced practitioner, and is not harmonized across Canada's provinces in any meaningful way. The provinces differ in reassessment cycles, assessment levels, number of tax classes, tax incentive structures, and even in valuation standards. Any attempt to influence or standardize an approach across such a wide array of statute and authority would need to be carefully considered with a view to avoiding unintended consequences, inequities, and jurisdictional conflicts.

Additionally, it should be noted that one of the largest impediments to the efficacy of tax tools related to property taxation is the system of tax assessment review. This is unique to each province (for example, in Alberta each municipality is responsible for establishing an Assessment Review Board) but the collective experience of Canadian property valuators is that review processes are long, cumbersome, expensive, and inconsistent. This is particularly the case in urban areas that are most likely the target of this initiative. When contemplating any action or influence it may take over Canada's property tax systems, the federal government should consider implications to the provinces' review and judicial processes.

Alberta's Property Tax Environment

Within Alberta, the MGA provides broad authority for municipalities to establish subclasses of residential property for tax purposes, which enables the establishment of a subclasses for vacant residential land with a distinct tax rate[1]. The MGA also provides explicit authority to create a vacant non-residential subclass.[2] This authority, however, is not widely used and most municipalities have refrained from implementing a tax specifically on vacant land for reasons further articulated in the next section. The City of St. Albert is an example of a municipality that has implemented a vacant land tax class, and may be able to provide helpful insight into any implementation challenges encountered. More broadly, Alberta's municipalities could be a useful case study for the federal government. Comparing the experience of municipalities that have implemented a vacant land tax against those which have decided against it, may help identify best practices, efficacy in meeting policy objectives, and barriers to implementation. While Alberta's legislation is broadly enabling for the creation of residential subclasses, the property assessment and taxation legislation in other provinces may prove more challenging to alter.

Policy and Implementation Considerations

The Government of Canada's policy objectives of this proposal are understood to be to encourage the development of land into housing; to discourage the speculative holding of land by making it more costly to keep land undeveloped; and to provide a source of revenue for various orders of government. The success of a vacant land tax in achieving these objectives would depend on a large range of factors such as definition, tax avoidance, flexibility and equity.

i) Definition

At present, Edmonton does not have a vacant residential or non-residential subclass. This is in part due to the difficulties defining what is meant by "vacant" as well as determining the date at which a property meets, or no longer meets, that definition. For example, efforts to develop under-utilized surface parking lots in Edmonton's downtown have so far proved ineffective, and the idea of increasing property taxes on these lots by classifying them as" vacant non-residential" property has often been raised. However, in property appraisal practice, these lots would not be considered vacant due to the presence of surface pavement or asphalt, fencing, and ticket booths. These are considered improvements to the land and render the land "improved" not "vacant"[3]. Since the term 'vacant' is not defined in the MGA, any interpretation used by the City's assessors would be subject to review by the Assessment Review Boards and ultimately by the Courts. This means the adoption

[1] MGA section 297(2)

[2] *Matters Relating to Assessment Sub-classes Regulation,* Alberta Regulation 202/2017, s. 2(1)(a).

[3] MGA section 284(1)(j)(ii)

and application of a vacant subclass under existing legislation carries significant legal risk that may reduce or eliminate the municipality's ability to achieve the intended policy objectives.

In practice, "vacancy" as it applies to land is a spectrum, rather than a discrete categorization. The term is often used to describe a variety of development stages, from bare land to underutilized or uninhabited structures. It is challenging to identify the degree of development required for a property to be considered vacant consistently within the wide range of circumstances typically found within a municipality's boundaries. For example, should the policy objective be simply to encourage development of under-utilized land, the desire might be that a property with a garage, but no residence be captured. However a garage is considered an improvement to land and would not meet the usual definition of vacant. In another situation, an average city lot improved by a single detached house would be unlikely to be considered vacant land, however the same house located on a quarter section of land that is otherwise unused may be. A parcel of land with no building would typically be considered vacant, while the same area of land consolidated with its neighbouring parcel improved by a home, would typically be considered improved, despite the density of development being unchanged. Creating a single policy to apply across a large area, whether that be a country, a province, a region or simply a single municipality, creates a large risk of introducing inequity and confusion into tax processes.

ii) Tax avoidance behaviours

While a vacant land tax may incent development, it may not achieve the policy objective of increasing housing supply, as any type of development would mean the land is no longer vacant. This could result in the unintended consequence of buildings being erected that meet a minimum definition, simply to avoid the vacant land tax. In some cases, this type of sub-optimal development may actually delay or prevent more intensive development. For example, if a developer is holding a vacant lot while trying to assemble land for a large apartment building, the tax may encourage the developer to build a smaller, less dense property based on the financial penalty, rather than waiting to consolidate a larger parcel.

Another consideration is the current practice of tax payers who seek to reduce their municipal tax liabilities on larger parcels of land by using them for limited agricultural purposes in order to meet legislative definitions of farming, and thereby to qualify for favourable tax rates or assessment values. Developers may also hold underutilized land for long periods of time - land with buildings that are older or in a dilapidated state, in order to avoid a vacant land tax. Increasing taxes on vacant land may cause more tax avoidance behaviours of this type, thereby negatively affecting municipal revenue streams and frustrating the overarching policy objectives.

Instead of a tax, a deeper consideration of the impact of underutilization of land on housing development may identify opportunities for more targeted policy interventions that may be more appropriate for the specific circumstances within each province, region, or municipality. It may also help to clarify the contours of a potential vacant land tax with respect to minimal developments.

iii) Flexibility and Equity

A vacant land tax would have different implications and effects in different areas of each of Canada's provinces, regions, and municipalities. It would be important to consider the trade-offs between applying a vacant land tax policy consistently with the need to allow municipalities to target the tax to particular areas or characteristics of land. Greater flexibility would allow municipalities to apply the tax where it may be more likely to achieve policy objectives, but greater flexibility reduces equity among property owners within municipalities, regions, and provinces as well as further complicating the assessment and tax system.

Implementation and Financial Considerations

Historically, property tax has been the primary funding vehicle used by Canada's municipalities, however these systems are coming under increasing pressure as societal changes and advancements in technology have significantly changed municipal tax bases. Administration of the property tax, in both the assessment and taxation functions, grows even more complex and costly, with every additional amendment and new judicial interpretation made to underlying property tax legislation. Property tax advisory services have proliferated in recent decades, as the market seeks to assist tax payers in navigating complex systems and minimizing their tax exposure which, in turn, causes additional cost and complexity as the number and significance of tax appeals increases.

Changes to property taxation being contemplated by any level of government, be that municipal, provincial, or federal should be very carefully considered in the context of an already fragile and over-burdened system. While tax tools and tax policy can prove influential in altering behaviour; it should nonetheless be recognized that the system is intended to be based on *ad valorem* principles of taxing property wealth, and that every deviation from this norm causes disruption to fundamental principles.

The stated policy objective of raising revenue for various orders of government is additionally concerning. A requirement to share more property tax revenues with other orders of government would have a negative impact on municipal fiscal capacity, since tolerance for tax increases will be diminished by those who are impacted by other taxes.

Further, it is likely not possible to implement a vacant land tax as a property tax without the participation of the provincial government, for at least two reasons. The first is that a vacant land tax would need to work in harmony with Alberta's existing property tax system, which is governed by the province. This would likely require substantial legislative amendment and bring problems of definition, as outlined above, to the forefront. The second is that the province has recently passed legislation that prevents municipalities from entering into agreements directly with the federal government without provincial approval. This may make it difficult to develop a framework for sharing revenues between orders of government, or for the federal government to provide support for the implementation and operation of a vacant land tax.

It is also unclear what incentive the federal government could offer Alberta municipalities to implement something they have, for the most part, effectively decided not to implement. While the consultation guide indicates the federal government may be willing to provide funding to support implementation of a vacant land tax, the operational costs to maintain such a tax over time would also likely be significant.

Municipal reliance on property taxation as its primary funding mechanism means great care must be exercised by superior orders of government when contemplating change. Property tax systems are varied, complex and intricate. They embody concepts that are already hard to define and measure, and they are subject to significant legal challenge. The changes being proposed, while well intentioned, will inevitably come with significant administrative and financial burden, during a time in which municipalities are challenged to fund basic service levels and balance budgets.

Questions of Clarification

Given the information provided to date, Edmonton would also seek clarity on a number of topics. Answers to these questions will support the City in providing a more tailored perspective on the proposed vacant land tax.

1. Would the Government of Canada expect assessment authorities to administer the vacant land tax, either by supplying data or administering the tax directly?
2. If the Government of Canada intends to administer the tax directly, how would it ensure a consistent and equitable approach across Canada?
3. What is the magnitude of the tax being considered? Tax rates that are applied to a property assessment can vary greatly across Canada owing to market differences. A tax rate of 1 mill, for example, would have a more significant impact on properties in Vancouver than it would in Edmonton.
4. How will the revenues generated from this tax be distributed and would they be earmarked for a specific purpose?
5. Given the federal government does not have jurisdiction to legislate Canadian municipalities, what is the mechanism by which such a tax, or such taxing powers, will be conveyed?

Thank you again for the opportunity to participate in this consultation. We look forward to hearing about next steps.