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Proposed Elimination of the Business Occupancy Assessment and Taxation

Service Nova Scotia & Municipal Relations
and
Union of Nova Scotia Municipalities

Summer 2004 Public Information Sessions

Introduction

As a result of requests by Nova Scotia municipalities and representatives from the business sector, the Province has expressed its willingness to eliminate Business Occupancy Assessment and Taxation (BOAT). The Province based this decision on recommendations put forward by a Joint Provincial-Municipal Review Committee (2003) and the Municipal-Provincial Roles & Responsibilities Review Committee (2002), which were formed to study this issue.

A one-year notice was sent to UNSM in April 2004 indicating a two-year phase-out of the tax. The Province anticipates introducing legislation to eliminate the tax in the 2004 fall sitting of the Legislature. Attached, is the **Discussion Draft** of the proposed amendments.

Why eliminate BOAT?

Nova Scotia is the only remaining province in Canada where a business occupancy tax is mandatory. Members of the business and municipal community have expressed their desire to eliminate this tax. The business community views BOAT as double taxation, which can be a deterrent to attracting new businesses to the province. From a municipal perspective, BOAT is not a lien on property; as a result, a large portion often goes uncollected. It is also costly and difficult to administer.

Public Information Sessions

In conducting its research, the Joint Provincial-Municipal Review Committee identified certain challenges associated with eliminating BOAT. To address these challenges, the Province, through Service Nova Scotia and Municipal Relations (SNSMR), with support from the Union of Nova Scotia Municipalities (UNSM), decided to host a series of public information sessions prior to eliminating this tax. The intention is to bring together members from municipalities, the business community and the tourism sector to inform them of the Province's intention to eliminate the BOAT over the next two years. UNSM and SNSMR hope to gather feedback from these groups to assist the Province in moving this initiative forward.

Joint Provincial-Municipal Review Committee Recommendations

The following is a summary of the recommendations being considered:

1. Business Occupancy Assessment and Taxation (BOAT) should be eliminated based on the following rationale:

   - Business Occupancy Tax is not a lien on property and more of this tax goes uncollected than any other form of property taxation;
   - Business Occupancy Assessment is costly and difficult to administer as businesses must notify Assessment Services Division of openings, closings and changes;
   - Business Occupancy Tax is perceived by the business sector as double taxation;
   - Businesses looking to locate in Nova Scotia can be deterred by the perception of an extra tax;
   - the federal government pays real property taxes in the form of grants-in-lieu of taxes, but does not pay business occupancy tax on properties it occupies; and
   - the elimination of BOAT will result in a more equitable and fairer tax system.

2. The Guiding Principles for the replacement of the BOAT envisage a tax that will:

   - be simpler than the current BOAT;
   - require fewer resources to administer;
   - not impede economic development;
   - encourage businesses to locate in Nova Scotia; and
   - minimize the problem of uncollected taxes.

3. There should be a one year notice on the elimination of BOAT followed by a two-year phase-out. A notice was sent in April 2004 and it is anticipated that the legislation will be introduced in the 2004 fall sitting of the House.

4. The two-year phase-out of BOAT will be as follows:

    - Commencing April 1, 2005, business occupancy will be assessed at 50% of the existing rates. Given current rates of 75%, 50%, and 25% (depending on the type of business) the applicable phase-out rates will be 37.5%, 25%, and 12.5%.
    - Commencing April 1, 2006, business occupancy assessment will be eliminated from the assessment roll.

5. Municipalities will recover any lost revenues from the elimination of the BOAT largely through increases in tax rates. It will be up to municipalities to determine the required tax rate increases and the split between their residential and commercial rates.

6. The one-year notice and the two-year phase-out should allow businesses and municipalities enough transition time to plan and deal with implementation issues arising from the BOAT elimination.

7. Seasonal Tourism facilities currently pay BOAT for the months they are open. When the BOAT is eliminated, the facilities may see a moderate tax increase. (There are 482 seasonal motels/hotels and 128 campgrounds in the province).

8. Non-profit organizations currently do not pay BOAT and could see a tax increase when BOAT is eliminated. The two-year phase-in of tax payment should allow them to adjust their business practices. Also, there may be municipal relief provided, as provisions of the MGA, (sections 65(au)(vi) and 71), allow non-profit organizations to apply for a municipal grant or a municipal consideration for partial or full tax exemption.

9. Vacant space was not subject to BOAT, and the elimination will see some tax increase on this space. Vacant space, however, is considered a reasonable business expense. In areas with high vacancy, the valuation process takes this factor into account when establishing the assessment value. Therefore, the commercial tax to be collected should be appropriate.

10. Landlords will be authorized to re-open leases to transfer to tenants any property tax increase, following specified guidelines defined by the legislation.

11. Villages and rural fire district commissions can also recover BOAT revenue losses by raising their existing rates. However, the present legislation does not allow for a split between residential and commercial tax rates.

Challenges

Challenges to the elimination of BOAT, some of which were not specifically addressed in the recommendations of the Joint Province-Municipal Review Committee (2003), include:

1. If municipalities decide to recover this lost revenue with a corresponding increase to the commercial tax rate, the 25% BOAT Group (service stations, restaurants, motels, campgrounds and motor vehicles dealerships) will be paying more municipal taxes than they currently pay. Generally, this increase should not be significant or create any undue hardship. However, within this 25% group, the seasonal tourist facilities would experience increases because they do not pay BOAT for the portion of the year that they are closed. Also, these seasonal tourist operations, including campgrounds, motels, and restaurants, are usually smaller family owned operations with low incomes.

   In recognition of their special circumstances, the impact on the seasonal tourist facilities could be minimized as follows:

   - Seasonal tourist facilities would be defined as businesses that are closed for at least 4 months per year.
   - Seasonal tourist facilities would be entitled to a rebate from their municipality at a rate of 3.5% times the commercial rate multiplied by the number of months closed. This formula was devised with the intent that these seasonal tourist facilities would pay about the same or slightly less in municipal taxes.

2. Charitable Organizations currently do not pay BOAT and their municipal taxes could increase with its elimination. They are, however, entitled to apply for municipal tax relief under the MGA. Some of these organizations may be concerned that this relief would be at the discretion of municipal councils. Guidelines could be included in the MGA to assist in working out the appropriate tax relief to mitigate the impact of the elimination of the BOAT on charitable organizations.

3. The private sector may expect the elimination of the BOAT to result in a corresponding reduction in the total taxes payable to the municipality. This is an unrealistic expectation for most businesses. As already noted, municipal recovery of the BOAT revenue losses will be largely achieved through increases in tax rates, and it will be up to each municipal council to decide on the split between its commercial and residential tax rates.

4. Whatever council's decision on split rates, the BOAT elimination will have varying impacts on the business sector. The 75% group (banks, loan or investment brokers or lenders and collection agencies) will pay less in property taxes. The 50% group, which is the vast majority of commercial uses, will generally pay about the same or

slightly less. The 25% group (service stations, restaurants, motels, campgrounds and motor vehicle dealerships) will pay slightly more. The 25% seasonal tourist facilities will pay slightly less, through a recommended rebate program.

5. With the BOAT elimination, adjustments in municipal tax rates would normally be required not only to recoup the loss in business occupancy revenues, but also to account for shifts in municipal revenues and transfer payments caused by changes in uniform assessment. The equalization grant and municipal payments for education costs, corrections, and the assessment service would all be affected by changes in uniform assessment. However, a review of the equalization grant together with the definitions of uniform assessment will likely be undertaken before the phase-out period. The review is expected to recommend changes that would minimize the impact of these shifts.

Where do we go from here?

After reviewing the comments from these sessions, staff will take them into account in preparing the final legislation on the elimination on the Business Occupancy and Assessment Tax. The legislation should be introduced in the fall 2004 sitting of the legislature.

Your Input is Requested

If you wish to submit a written comment on the elimination of the Business Occupancy and Assessment Tax, please send them by July 30, 2004 to:

Stephen Feist, Municipal Advisor
Service Nova Scotia & Municipal Relations
Maritime Centre, 14 North
1505 Barrington Street
PO Box 216
Halifax, N.S.
B3J 2M4

or email to:

busocc@gov.ns.ca

Schedule of Sessions:

From 1 to 3 pm

June 29 - **Truro** - Best Western Glengary Hotel

June 30 - **Wolfville** - Old Orchard Inn

July 5 - **Yarmouth** - Rodd Grand Hotel

July 8 - **CBRM** - Delta Hotel

July 13 - **HRM** - Lord Nelson Hotel

July 20 - **Antigonish** - Green Way Claymore Inn

Discussion Draft

An Act to Amend Chapter 23 of the Revised Statutes, 1989, the Assessment Act, Chapter 18 of the Acts of 1998, the Municipal Government Act, and Chapter 2 of the Acts of 1990, the Artists Municipal Tax Exemption Act

As well as amendments to change twenty-five percent to twelve and one-half percent, fifty percent to twenty-five percent, and seventy-five percent to thirty-seven and one-half percent for year one and then eliminating all references in the three pieces of legislation to business occupancy assessment and taxes for year two, the following provisions are proposed:

Provisions
1) authorizing municipalities to set different levels of area rates:

Section 75 of Chapter 18 is amended by adding immediately after subsection (6) the following subsection:

(7) The area rate referred to in this Section may be different on commercial, residential and resource property.

2) permitting landlords to recover the cost of increased commercial taxes from tenants:

Chapter 18 is further amended by adding immediately after Section 78 the following Sections:

78A (1) Notwithstanding any provision in a lease, license or permit for commercial property and subject to subsection (3), the lease, license or permit is deemed to include a provision enabling the owner of the property to increase the rent or annual deposit in respect of taxes in relation to any increase in the property tax payable by the owner for the fiscal years 2005 - 2006 and 2006 - 2007.

(2) Where there is more than one tenant or a tenant uses or occupies only a part of the property, the increase referred to in subsection (1) shall not exceed the portion of the increase in taxes attributable to the part of the square footage of the property used or occupied by the tenant, licensee or permit holder that is proportional to

the increase in taxes attributable to the square footage of the whole property.

(3) Where the annual deposit is increased or the rent is increased pursuant to subsection (1), the owner shall give the tenant notice in writing not later than ninety days before the date on which the increase is due.

(4) Notice to a tenant under subsection (3) may be provided by

(a) giving it to the tenant personally;

(b) giving it to an agent or employee of a tenant on the premises;

(c) posting it in a conspicuous place on some part of the premises; or

(d) sending it by registered mail to the tenant in which case it is deemed to have been given on the third day after the date of mailing.

3) providing for a rebate to owners of seasonal tourist properties:

78B (1) In this Section,

(a) "seasonal tourist facility" means

(i) a restaurant, hotel or motel licensed under the *Hotel Regulations Act*, or

(ii) a campground or trailer park licensed under the *Camping Establishments Regulation Act* except the portion of the premises that are licensed under the *Liquor Control Act* as a cabaret, tavern, beverage room or lounge that is open during some part of the year and is closed for at least four months of the year;

(b) "seasonal property" means property or part of a property that used as a seasonal tourist facility.

(2) Every owner of seasonal property shall be granted a rebate of taxes levied pursuant to Sections 72, 73, 75 or 80 in accordance with subsection (3).

(3) The amount of the rebate shall be calculated as follows:

(a) for the fiscal year 2005 - 2006, one and three-quarters per cent of the tax payable in respect of the property times the number of months that the business is closed; and

(b) for the fiscal year 2006 - 2007 and thereafter, three and one-half per cent of the tax payable in respect of the property times the assessed value of the property times the number of months that the business is closed.

(4) Any owner of seasonal property may apply to the municipal treasurer for a rebate.

(5) The application referred to in subsection (4) shall be in the form and shall include the information that the treasurer requires.

(6) Subject to subsection (7), within thirty days of receipt of an application referred to in subsection (4), the treasurer shall pay the rebate to the person.

(7) Where an applicant owes a debt to the municipality, the treasurer shall apply the rebate to reduce that debt first.

(8) For purposes of this Section, closure of a seasonal facility for part of a month is not closure for a month.

4) authorizing municipalities to set different levels of fire protection rates:

Section 80 of Chapter 18 is amended by adding immediately after subsection (3) the following subsection:

(4) The *(fire protection)* rate referred to in subsection (1) may be different for commercial, residential and resource property.

5) authorizing Halifax Regional Municipality to set different levels of area rates for payments made to the school board in respect to former City schools:

Section 530 of Chapter 18 is amended by adding immediately after subsection (2) the following subsection:

(4A) The area rate *(for former City of Halifax and City of Dartmouth schools)* referred to in subsections (2) and (4) may be different for commercial, residential and resource property.