

MTAG / MTE Newsletter – January 2023

Vacant Home Tax – Does Implementing it make sense for your Municipality?

Introduction

The manner in which new Tax Policy Options can be implemented by Ontario municipalities is changing. When the Province first transferred responsibility for the setting of Tax policy to municipalities, the options and flexibility it provided them were very restrictive with narrowly defined parameters. Further, the rules and regulations surrounding these options were the same for all municipalities. Municipalities could only “accept and implement” under closely constrained rules or decline to participate.

But recently, the Province’s approach to Tax policy Options has been changing. Beginning with the introduction of the *Small Business Property Tax Class*, the Province has shifted its approach from being prescriptive to facilitative. The “cookie cutter” has been put away, and Municipalities are now being given more freedom to design programs tailored to their own needs and circumstances. No longer must the rules governing these “Options” be the same for every municipality.

This new approach to how Tax Policy Options should function has now been extended to the Provincial government’s most recent option: the ability for municipalities to design and implement their own *Vacant Homes Tax* programs. The purpose of this **MTAG / MTE NEWSLETTER** is to look at what is involved in implementing a *Vacant Home Tax*, and help municipalities identify the questions and considerations that they and their councils should be contemplating when considering whether to implement such a program.

Background

Ontario’s *Fair Housing Plan* was introduced on April 20, 2017. The Province indicated at that time that the intent of this Plan was to:

- help more people find affordable homes
- increase the housing supply
- protect buyers and renters
- and bring stability to the Ontario real estate market.

In 2023 (and beyond), this initiative remains part of the Province’s overall housing strategy even as it announces its plans to mandate specific targets for the number of new housing units individual municipalities will be expected to have constructed over the next decade.

A key initiative of *Fair Housing Plan* is the legislation which empowers municipalities to implement a *Vacant Homes Tax* (“VHT”) within their jurisdictions. The stated intent of this legislation is to permit municipalities to implement a VHT in order to “encourage” property owners to either sell unoccupied housing units or begin renting them. The idea is that a VHT will help minimize the possibility of viable residential units being left vacant by speculators.

On May 17, 2017, Bill 127 – *The Stronger, Healthier Ontario Act (Budget Measures), 2017*, received Royal Assent. This Bill amended and repealed various Acts such as *The Municipal Act* and *The City of Toronto Act* as necessary to implement the measures contained in the 2017 Ontario Budget, including the *Fair Housing Plan* thereby giving municipalities the authority to implement their own VHTs.

The amendment to *The Municipal Act, 2001* consisted of adding *Part IX.1 Optional Tax on Vacant Residential Units*. However, whereas the changes to *The City of Toronto Act* granted that city the unconditional authority to implement a VHT, the amendments to *The Municipal Act* require other municipalities to first obtain approval from the Minister of Finance before doing so. Regardless, once this permission is received, all other rules and regulations regarding VHT are the same for all municipalities, including the City of Toronto.

The City of Toronto has already implemented a VHT as has the City of Ottawa. We also know that other municipalities such as the City of Hamilton are either in the process of applying for or have recently received permission from the Minister of Finance to implement their own VHT programs as well.

What is a Vacant Housing Tax?

A Vacant Housing Tax (VHT) is an additional charge that is levied against any qualifying property in a municipality. What constitutes a property being classified as “Vacant” is determined by the rules and parameters established by the jurisdiction. Otherwise, the mechanism by which it is calculated and applied is the same as any other property tax component in Ontario: Assessed Value X Tax Rate.

It is in addition to all regular taxes, area rates and charges for which a subject property is otherwise liable. In other words, it is a surcharge that increases the amount of property tax that would otherwise be levied against a property.

What Restrictions are there?

Almost none. There are no specific restrictions or limitations within Bill 127 and its associated regulations. On the contrary, Bill 127 makes it clear that the decisions regarding design, implementation and use of the funds raised from implementing a VHT are the responsibility of the municipality with responsibility for Tax Policy in the jurisdiction. Therefore, in a two-tier jurisdiction, unless such responsibility has been delegated to the lower-tier, it will be the upper-tier (county or region) that must enact the VHT, although the rules need not be the same for every constituent municipality.

That said, the plan to be implemented in all jurisdictions except Toronto, must first be approved by the Minister of Finance, which implies that despite the high degree of discretion being provided municipalities, these plans must nonetheless be consistent with the overall objectives of the Province.

It should also be noted that both the City of Toronto and City of Ottawa VHT programs stipulate that the funds raised through this program, net of the expense of running it, are to be directed towards affordable housing programs in each municipality. In other words, the net revenues from these VHTs are *NOT* considered as general revenues.

How does a municipality determine if implementing a VHT makes sense?

This process should start with **developing an understanding of the extent to which there are properties which *COULD* be available for occupancy in the municipality, but which currently are not. Is this inventory significant or incidental?** In other words, does the problem warrant the time and expense that will be involved in implementing a VHT?

This is a key question because to implement a VHT, a municipality needs to create a completely new administration structure, including enforcement and appeal processes, all of which will require funding and most likely additional staff to operate. Regardless, if the answer to this question is “yes,” and there is a substantial number of properties that could be offered for rent but are not, then the next step is for the municipality to develop a detailed framework for the implementation and administration of a VHT. In general, such a framework would have to look at:

- The definition of vacant homes. Will the rules be the same everywhere or will there be variations. If there are variations, what will be the basis for these differences?
- Exemption criteria
- Tax rates and penalty options
- Projected revenue generated
- Cost of the implementation and ongoing administration of the VHT program
- In two-tier jurisdictions, which level of local government will be responsible for what aspects of the VHT program
- Proposed application of revenues in excess of program expenditures

It is also advisable to review what other jurisdictions have implemented or are in the process of implementing because creating a VHT can be expected to have an effect on the local economy and your housing market. Having an understanding of what this may be will help avoid problems and unintended consequences in the future. Finally, it must be noted that as with the other voluntary & optional “tax policy programs” the Province has recently introduced, it is the Province’s expectation that municipalities will hold public meetings and consult with ratepayers on the design of a VHT.

Municipalities need also to fully consider how they will administer a VHT program. How are they going to approach the question of when and how to add/remove properties from being subject to it? Will this occur on a “real time,” continuous basis or will the requirement to pay (or not pay) a VHT be fixed and only reviewed periodically (i.e.: annually), with the decision of whether to apply the tax or not applying to an entire tax year? Both options are equally valid and have their own unique administrative challenges.

Further, MPAC’s only responsibility vis-à-vis a VHT is to code a property as subject to the VHT based on instructions it receives from the municipality. This is because it is the sole responsibility of municipalities to establish the mechanism for applying and collecting a VHT, as well as adjudicating appeals whenever a taxpayer questions the imposition of a VHT on their property. This is a significant reason why the cost/benefit tradeoff from implementing a VHT should be fully studied before your municipality makes the decision to proceed or not.

Regardless, once you decide to proceed and the programs key components have been determined (e.g.: applicability, reporting, collections, compliance, notifications, etc.) along with administrative aspects being set (e.g.: enforcement & allocation of net revenues), then the municipality can then look to obtain approval from the Minister of Finance to proceed and implement its own VHT.

The Municipal Experience Thus Far

The municipalities we know have fully implemented VHTs approached the process from different perspectives but culminated their efforts with programs that are remarkably similar. Both Toronto's and Ottawa's VHT surcharges are in the area of 1% of assessed value, a rate that significantly increases the amount of tax subject properties must pay. In both municipalities it is the responsibility of staff to identify the properties to be subjected to the VHT and the responsibility of property owners to file for exemptions from the tax. If such filings are not made prior to set deadlines, then the default municipal position is to impose the tax.

Where the programs of these municipalities differ is in the definition(s) of what constitutes a property that will be subject to the VHT. This is to be expected as it was always the Province's intent to allow individual jurisdictions to tailor VHTs to reflect local needs and priorities. Similarly, while Toronto adds/deletes properties in real time, Ottawa has elected to fix the status of properties for the entire taxation year. Both municipalities publish the details of properties to be taxed and require property owners to file for exemptions. If the owners of identified properties do not do file requests for exemptions (or do so on time), then the default position of both municipalities is to apply the VHT.

Both municipalities advise that it is the handling of requests for exemptions and appeals against decisions to impose the VHT that account for most of their administrative workload – and cost. As for the revenues generated by the VHT and how close the amount raised by it matches projections made during the planning/ implementation stage for the VHT, it is still too soon to tell. Regardless, Toronto and Ottawa believe that there will be surplus revenues that can be directed towards funding affordable housing programs in their jurisdictions.

Conclusions

The decision to implement a VHT is not something that can be made overnight. There are real cost consequences to implementing such a program, and yes, a significant potential that it can generate funding that can be applied to enhance local affordable housing initiatives. The importance of this has now increased with the Province's recent move to impose specific targets on municipalities for the creation of new housing units. Accordingly, the cost/benefit equation of implementing a VHT may now have shifted more in favour of doing so for more (smaller) municipalities.

Regardless, the decision to do so is still that of the jurisdiction with responsibility for Tax Policy. In single-tier jurisdictions the question is simply are there different areas in

the municipality that require different, unique criteria? In two-tier jurisdictions, it must also be determined whether a VHT will apply in all constituent municipalities or just some of them, after which the question about a single set or multiple sets of criteria can be accurately assessed.

In either case, this is an extremely complex issue with no correct answers beyond that a municipality is free to determine what works – or does not work – best for it and its taxpayers. There is also a tremendous amount of research, time and expertise involved in completing a project like this. Which is why several municipalities who have undertaken this process decided to outsource all or some of the steps outlined in this Newsletter to organizations such as MTAG PPC and MTE Consulting.

This means that MTAG PPC and MTE Consulting have direct knowledge, expertise, and experience in conducting all or part of the research, analysis and planning needed to determine whether it makes sense for your municipality to implement a VHT. So, if you have questions and need assistance, we have answers and can provide the help you require.

To find out how, all you need do is ask.

In July 2022, MTAG Paralegal Professional Corporation, Municipal Tax Equity Consultants Inc. and MTE Paralegal Professional Corporation joined together. And while MTAG PPC, MTE and MTE PPC continue to support and advise their respective clients as they always have, we are now working together to better meet the needs and requirements of our client municipalities.

Both MTAG PPC and MTE Consulting are currently working with specific municipal clients to determine how best to implement a Vacant Homes Tax that is appropriate for their jurisdiction. If you and your municipality are considering implementing a Vacant Homes Tax and have questions regarding it or how best to proceed, please do not hesitate to contact the undersigned.

MTAG PPC, MTE, MTE PPC and our staff of experienced professionals are here to help you.

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