

To: Warden and Members of County Council

From: Director of Corporate Services

Tax Policy – Optional Small Business Subclass

RECOMMENDATION

1. **That an optional Small Business Property Subclass not be implemented for the 2022 taxation year.**

REPORT HIGHLIGHTS

- New property tax policy option – small business subclass introduced by the Province through 2020 Ontario Budget
- Regulations released in May 2021 - permits municipalities to create an optional small business subclass for certain commercial and industrial properties at a reduced tax rate

Implementation Points

Further consideration of the optional small business subclass as a tax tool will be given in each subsequent year through the County's annual tax policy review and adoption process.







Financial Impact

The approval of the recommendation contained in this report will have no financial impact beyond what has been approved in the current year's budget.

Communications

This report has been prepared in collaboration with the Area Municipal Treasurers. A copy of this report will be circulated to the Area Municipalities.

Strategic Plan (2015-2018)

					
WORKS WELL TOGETHER	WELL CONNECTED	SHAPES THE FUTURE	INFORMS & ENGAGES	PERFORMS & DELIVERS	POSITIVE IMPACT
		3.ii. 3.iii.			

DISCUSSION

Background

As part of the Provincial government's *2020 Ontario Budget*, it was announced that municipalities would be provided the ability to design tax policy in the form of a reduction of tax for eligible small businesses through the adoption of a new optional small business property subclass. At the time of adopting the County's 2021 tax policy, the Province had not released regulations containing details for implementing the new optional small business property class. At that time staff, in conjunction with the Area Municipal Treasurers, committed to conduct a more fulsome review in order to formulate recommendations with respect to the new tax policy option once the regulations became available.

The regulations were subsequently filed on May 7, 2021, effectively implementing the subclass through amendments to O.Reg. 282/98 under the *Assessment Act*, O.Reg. 73/03 under the *Municipal Act, 2001* and O.Reg. 121/07 under the *City of Toronto Act, 2006*. The following provides an overview of the implementation details, including requirements for municipal by-laws, administration of the subclass, and provincial matching of municipal property tax reductions with education property tax reductions.

Implementation

Adoption of the optional small business property subclass would require the municipality to pass a by-law providing the following:

- The decision to adopt the subclass via upper tier municipal by-law
- Subclass reduction to be applied to commercial and/or industrial class municipal tax rate
 - Can be set up to 35% of the municipal tax rate for the property class
- Requirements for properties to be eligible
 - Defining eligibility criteria that reflects local priorities and needs
 - Properties classified as large industrial, parking lot, vacant land or excess land are not eligible
- Appointment of a Program Administrator to administer the program
- Appointment of an Appellate Authority to hear any appeals

Municipalities may also choose to include provision in their policy that requires landlords to pass the tax reduction to tenants as a condition of eligibility.

Program Administration

The optional small business subclass policy will require municipalities to establish detailed eligibility criteria to develop and administer a process that will identify and approve eligible properties for inclusion in the subclass. The regulations require a staff appointment referred to as the Program Administrator – who will identify qualifying properties that meet the eligibility criteria.

The process could include an application or a criteria-based determination of eligibility. The list of properties approved for inclusion in the subclass by the Program Administrator must be listed publicly. The Program Administrator is also required to establish a process where a property owner can make a request for reconsideration.

Municipalities are required to notify the Municipal Property Assessment Corporation (MPAC) of the properties included in the subclass, in order for MPAC to classify the property within the small business property subclass for taxation purposes.

In addition, municipalities will be responsible for monitoring ongoing eligibility, updating the registry of eligible properties and notifying MPAC when properties become eligible or ineligible for the subclass as a result of a municipal determination.

An Appellate Authority will also be required to be appointed by the municipality to hear appeals about whether or not the property should be included in the subclass. The decision of the Appellate Authority can be further appealed to the Assessment Review Board.

Funding the Subclass

In terms of funding the reduction of tax for the small business subclass, municipalities have the following options:

- absorbed through a levy decrease;
- funded broadly across all property classes; or
- funded within the commercial and/or industrial property class through the adoption of revenue neutral tax ratios.

Provincial Matching of Tax Reductions

As announced in the 2020 Provincial Budget, the Province will consider matching municipal property tax reductions with education property tax reductions to provide further support for small businesses, subject to the following conditions:

- municipality must notify the Minister of Finance of the decision to adopt the subclass and submit a municipal by-law outlining the program requirements as well as estimated total municipal tax relief to the small businesses;
- municipality to conduct consultations with business stakeholders regarding the small business property subclass;
- the Minister will review each submission and determine whether to match municipal reductions on a case-by-case basis; and
- submissions to the Minister of Finance must be received prior to March 31 for the applicable taxation year.

Comments

Upon review of the regulations for the optional small business subclass, it is apparent that they are limited to setting out the authority required of municipalities to develop and implement a locally designed program, which is a significant departure from the standard approach to optional tax policies in Ontario. This subclass will require a much different approach than what municipalities have been used to in considering tax policy options. Instead, municipalities will have to give careful consideration to:

- deciding what will qualify as a small business locally;
- determine what criteria will be relied on and how eligibility will be documented in order to be substantiated;
- design and implement an ongoing administrative structure including a quasi-judicial function administered by municipal staff; and
- provide MPAC with annual listings of eligible properties and updates as necessary to ensure compliance in accordance with the local program.

There are a number of preliminary challenges to address if the County and its Area Municipalities are interested in employing an optional small business subclass, starting with defining “Small Business” – arriving at a definition that determines who gets the benefit, who does not, and who will bear the costs of the benefits to those properties in the subclass. These decisions will be fraught with opposition, not only at the time the policy is established, but in post implementation when properties are determined eligible or ineligible.

As for the eligibility criteria, assessment data does not support an effective or objective assessment of whether a business is large or small, rather it relates to the building’s general use and not the value, wealth or sustainability of the business. In light of the foregoing, there should be other factors considered when defining those properties that are eligible, such as:

- responsibility for tax burden – landlord vs tenant;
- size of operation – whether the business is family owned and operated on a street-facing building; owned by a local owned franchise; or operating in a mall and owned by a nation-wide chain;
- type or nature of business, sector – targeting certain businesses such as tourism sector, hospitality, personal care and excluding certain businesses that are not generally open to the public providing off-site services, as examples;
- location – main street, existing commercial zones, new commercial zones, business parks, etc.

Although property owners are deemed responsible for property taxes under the *Municipal Act*, a majority of commercial tenants accept this responsibility within their lease agreements. On that basis, there are two critical factors to consider:

1. Owner Occupied with Tenants - if the benefit, full or partial, is to be extended to the tenant it will mean more municipal administration and will most likely rely on an application based system; and
2. Business Occupied - if the benefit is extended to owner occupied businesses, which are easier to identify, it is likely to result in inequity between businesses of similar operations.

Other Impacts and Implications

In contemplating an optional small business subclass, municipalities should establish a general concept or vision of what they plan to achieve as a critical first step. This would include impacts on businesses included, amount of benefit for those included and the cost implications for other taxpayers. A municipality should also determine the operational process and resources that will add costs to the levy – who will pay for those additional costs to deliver the program.

Operational roles and responsibilities within a two-tier municipal structure will need to be determined in consultation with the County and Area Municipalities.

Not unlike the mandatory capping regime that the County phased-out as soon as the legislation allowed municipalities to do so, consideration of the amount of tax reduction(s) and how they are to be funded will require complex analysis that will increase the County's cost for administering the collection of tax for all taxpayers – which was the main impetus behind the County's desire to exit the capping program when the option became available. The optional tax reductions under a small business subclass will impact future years' assessment adjustments which will require consulting services assistance and create additional costs to be borne by all taxpayers, as was experienced under the capping regime.

To date, the Cities of Toronto and Ottawa have implemented a small business sub-class while the Counties of Bruce, Grey and City of Barrie undertook the necessary public consultation process and decided against implementation. Other Counties in our region who have decided not to consider the small business subclass for 2022 includes Bruce, Perth and Wellington.

Aside from employing tax policy to support our local small business community, the County, in collaboration with the Area Municipalities, provides Community Improvement Plans to assist in making improvements to their buildings. The County also funds a "Future Oxford Legacy Fund" and an "Economic Stimulus Fund" both administered by Community Futures Oxford that offer financial supports to small and medium sized local business through grants and loans that are subject to meeting specific criteria demonstrating need and positive community impact. It is programs such as these may be more impactful to the community than a complex administratively burdensome and inequitable tax reduction related policy.

In addition to the local support for our business community, effective January 1, 2021, the Province reduced the Business Education Tax Rates province-wide to a uniform level of 0.88%. This meant an education tax reduction of 30% for businesses in Oxford County that is now funded by other provincial taxpayers and local taxpayers who now make up for the loss of the education tax portion previously retained by the municipality for certain Payment in Lieu Properties.

Conclusions

In light of the challenges and additional costs anticipated by the adoption of an optional small business subclass, County Treasurers are of the opinion that the challenges and cost burden to other taxpayers will outweigh benefits to local small businesses.

SIGNATURES

Departmental Approval:

Original signed by

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Approved for submission:

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