Forgiveness (cancellation of all or part) of Property Taxes

Situation:

Can municipalities encourage economic development through the forgiveness of property taxes?

Interpretation:

This is a complex issue and it has created major problems for some municipalities. Municipalities are therefore encouraged to seek legal advice on this matter. The answer to this question depends very much upon the particular circumstances facing council, and the scope and objectives of the plan being considered by council.

While sections 333.1, 360, and 364 of the Municipal Government Act (MGA) allow special tax treatment for certain types of properties, section 347 is the only section that enables the forgiveness of any type of property or business tax that is not restricted to a certain type of property/business or owner. Specifically, section 347(1)(b) provides:

“If a council considers it equitable to do so, it may, generally or with respect to a particular taxable property or business or a class of taxable property or business, do one or more of the following, with or without conditions:…..(b) cancel or refund all or part of a tax.”

If council determines that it is to the advantage of the municipality to forgive property or business taxes pursuant to section 347(1)(b), council must recognize that the exercise of this power is subject to a number of considerations:
• Before cancelling all or part of any property or business tax, council must first
decline that it is equitable to do so. The types of circumstances that will be
considered equitable are not clear. However, the Court of Queen’s Bench did
offer some comments about this in the case of Telus Communications Inc. v.
Opportunity (MD No. 17) [1998] AJ No. 1182 which might suggest that what is
equitable may be viewed from a tax perspective rather than from an economic
development perspective.

• Section 347 does not provide for any long-term agreements, therefore any
forgiveness of property taxes would have to be done annually.

• School taxes, as a result of the school requisition, cannot be forgiven.
Therefore, the full requisition would have to be paid to the province or the opting
out school authority. The municipality would have to pay this portion of taxes
out of general revenue if it was not collected from the property owner, which
means that this portion of the tax burden is transferred to the rest of the
taxpayers in the municipality.

• Section 347 must be exercised by resolution or bylaw.

• Implicit in the requirements of section 347 is the prerequisite that the tax must
be validly imposed before it can be forgiven.

• The reference to “class of property or business” in section 347 refers to the
classes of property described in section 297. Accordingly, section 347 does not
enable a council to cancel taxes for a class of property or business that is not
described in section 297 nor for a subclass of property or business.

• Finally, the Court in the Telus case made some statements regarding the use of
section 347 to establish a bonus scheme. Any municipality considering its
options should review this case with their legal advisor.

• It is strongly urged that municipalities consult with their own legal advisors
before taking any action in this regard.

Note: This is for information only. For specific legal advice, please consult your lawyer.