

March 24, 2023

## **Provincial Assessor's Directive 23-01**

### **Direction Regarding the Application of Schedule D Additional Depreciation for M&E**

The intention of this Directive is to clarify when additional depreciation, as outlined in Schedule D of the Machinery & Equipment Assessment Minister's Guidelines, is appropriate. This clarification directs all assessors under the oversight of the Provincial Assessor to ensure there is a consistent and correct application of Schedule D additional depreciation across all designated industrial property machinery and equipment ("M&E") assessments. It also provides direction to property owner representatives to support reporting on Schedule D requests for additional depreciation. The direction in this document is meant to replace any previous direction provided, and has been drafted having regard for recent Land and Property Rights Tribunal ("LPRT") decisions and Court decisions. Please note this is not a change in government policy, rather the purpose of this directive is to ensure designated industrial property assessments align with recent court decisions and existing provincial policy.

#### **Background**

Machinery & equipment assessments are unique and follow a specified regulated valuation standard, rather than a market value standard. This is prescribed by assessment legislation, which includes the *Municipal Government Act* (MGA), the Matters Relating to Assessment and Taxation Regulation (MRAT), the Alberta Machinery & Equipment Assessment Minister's Guidelines (Minister's Guidelines), and the 2005 Alberta Construction Cost Reporting Guide (CCRG). The distinction between the two valuation standards has been accepted by the Alberta Court of Appeal in the *TransAlta* decision (citation at the end).

The difference between the two valuation standards is important to keep in mind when considering whether the criteria to qualify for additional depreciation has been met, and then, if the criteria has been met, how to quantify the additional depreciation.

The MGA provides the overall direction, rules, and definitions regarding the preparation of property assessment. Section 292(2) of the MGA provides that the assessment must reflect:

- (a) the valuation standard set out in the regulations; and
- (b) the specifications and characteristics of the property as specified in the regulations.

MRAT provides the valuation standard for M&E in section 12(1), which states: "*the valuation standard for machinery and equipment is that calculated in accordance with the applicable procedures set out in the Alberta Machinery and Equipment Assessment Minister's Guidelines.*" Furthermore, MRAT 12(2) states: "*in preparing an assessment for machinery and equipment, the Assessor must follow the applicable procedures referred to in subsection (1).*" The Minister's Guidelines prescribe automatic and fixed depreciation beginning at 75%, which equates to the removal of 25% of the M&E value in the first year. A final factor in the regulated M&E assessment is the statutory level of 77% prescribed in MRAT 12(3),

resulting in a further regulated reduction of 23% for all M&E assessments. This 23% reduction is not used for other property types and is unique to M&E assessments.

The Court of King's Bench in *TransAlta* at paragraph 13, specifically stated that the regulated valuation standard is not market value and is determined by a formula, which is intended to facilitate a predictable, consistent and stable assessment base that is not subject to the peaks and valleys of changing market conditions. The analysis by the Court of King's Bench was accepted by the Court of Appeal at paragraph 67. The same conclusion can be found in the LPRT's CNRL decision at paragraphs 505, 521 and 522.

The application of depreciation for M&E is then laid out in Schedules C and D of the Machinery & Equipment Assessment Minister's Guidelines. Schedule D of the Guidelines states "*for any depreciation that is not reflected in Schedule C, the assessor may adjust for additional depreciation provided acceptable evidence of such loss in value exists.*" When considering this phrase in Schedule D, the LPRT had regard for the goal and purpose of the regulated valuation standard, and regard for the type of depreciation already granted in Schedule C. The LPRT found that Schedule C includes normal physical, normal functional and normal external obsolescence (CNRL paragraph 451). The LPRT in CNRL, concluded that Schedule C distributes the included costs over the age life of the M&E (paragraph 576). The LPRT stated that if the situation giving rise to a claim for Schedule D was already addressed in Schedule C, then the M&E did not qualify for additional depreciation under Schedule D (CNRL paragraph 568(b)(ii)).

When considering whether additional depreciation under Schedule D is warranted, the Provincial Assessor recommends the assessor consider this question in two stages. First you must satisfy that the circumstances surrounding the M&E meet the criteria set out by the LPRT decisions to qualify for additional depreciation. Secondly, if the criteria to qualify has been met, you should then consider how the additional depreciation can be quantified under the regulated valuation standard.

### **Criteria to Qualify for Schedule D**

The criteria and process listed below are followed by the Provincial Assessor and were confirmed by the LPRT's CNRL decision, specifically paragraph 568(b)(ii). The criteria to qualify for Schedule D are that the circumstances must:

- (a) cause an unforeseen decrease in the age life of the M&E,
- (b) be site specific,
- (c) be permanent or long term,  
and
- (d) be unexpected and not already captured in Schedule C.

Based on this criteria, Schedule D is not applicable for general economic conditions as that is not an unforeseen decrease in age life, is not site specific, and is not permanent or long-term. Furthermore, from the CNRL and Imperial decisions we have the following guidance about the criteria to qualify for Schedule D additional depreciation:

- reduced commodity prices are not sufficient to meet the criteria to qualify for Schedule D additional depreciation (CNRL paragraph 570);
- economic conditions will in most cases not qualify for Schedule D (Imperial paragraph 242 and CNRL paragraph 570);
- business valuations represent a market value approach and are of limited value in the regulated valuation standard (CNRL paragraph 573);

- M&E that is fully depreciated under Schedule C and that might have an increased assessment because of changes in the Assessment Year Modifier, do not qualify for additional depreciation under Schedule D (CNRL paragraph 536); and
- the purpose of the regulated valuation standard is not to guarantee an assessment at the lower of market value or the Schedule C depreciated value (CNRL paragraph 521).

### **Criteria to Quantify Schedule D**

Acceptable evidence must be measurable and involve permanent, unexpected, and negative impact on the utility, productivity, economic viability, or a reduction of the anticipated useful life of the asset itself (CNRL paragraph 578). Documentation to support any Schedule D adjustment must be provided by the property owner and reviewed by the assessor.

In the Imperial decision, while the LPRT found that the M&E was suffering from site specific, external obsolescence and met the criteria to qualify for Schedule D additional depreciation, they commented that the way in which the property owner tried to quantify the additional depreciation was not acceptable (paragraph 266). Imperial based its claim on reduced throughput as compared to its expected throughput, and the LPRT commented that it was not acceptable to compare the production of the M&E to itself.

All Schedule D adjustments are to be reviewed annually to determine whether the adjustment should be continued, updated, or removed.

We thank all assessors and property owner representatives for their efforts in following this directive to ensure consistent and correct designated industrial property assessments are achieved.

Regards,



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#### Case References:

*TransAlta Generation Partnership v. Alberta (Minister of Municipal Affairs)*, 2021 ABKB 37  
*TransAlta Generation Partnership v. Alberta (Minister of Municipal Affairs)*, 2022 ABCA 381  
(application for leave to appeal to the Supreme Court of Canada pending)

Canadian Natural Resources Limited v. Provincial Assessor, 2021 ABLPRT 623

Imperial Oil Resources Limited v. Provincial Assessor, 2022 ABLPRT 1391  
(the Imperial Oil decision has been released to the parties but has not yet been posted on the LPRT website as the LPRT is preparing a copy of the decision with confidential information redacted)