



SALGA

South African Local Government Association

Local Government Brief 07-2011

MUNICIPAL PROPERTY RATES: RECENT DEVELOPMENTS

1. PURPOSE OF THIS BRIEFING

The Department of Cooperative Governance and Traditional Affairs published proposed amendments to the Local Government: Municipal Property Rates Act 6 of 2004 in June 2011. This Briefing Note discusses certain issues that emerged from the public debate that emerged and other developments related to property rates. It focuses on the debate surrounding the rating of residential property and a recent judgment concerning the power of the Minister to cap rates.

2. THE AMENDMENT BILL

The Amendment Bill seeks to ensure involvement of the Provincial sphere in the property rates framework. For example, the MEC for Local Government must be consulted before an application for the review of rates is made to the Minister (see below). Furthermore, the MEC can extend the validity of a valuation roll for a period of two years. The MEC is also generally charged with monitoring the implementation of the proposed amendments by municipalities.

In order to create certainty and clarity, the Bill adopts definitions of different categories of property. The Bill also provides just two grounds for setting rates, use and permitted use. The Bill provides for a uniform rate for residential property but also allows municipalities to determine which properties are exempt from rates. The Bill excludes recipients of an older person's or disability grant from payment of rates. Furthermore mining rights or mining permits will not be subject to property rates; however, surface infrastructure on mining property will be subject to rates. In regard to valuation, property holders whose property has seen upward adjustment of value will not be liable to pay any interest while property holders whose property's value is adjusted downwards are to be repaid.

3. DEFINING AND RATING OF RESIDENTIAL PROPERTY

According to media reports, homeowners of additional properties feared that they might have to pay commercial rates (which are usually much higher than on residential properties) on additional residential properties they let out or were not living in, such as holiday homes. In response to the outcry the Deputy Minister of Cooperative Governance and Traditional Affairs, Yunus Carrim, maintained that the proposed amendments only targeted guesthouses, bed-and-breakfast establishments and small hotels for payment of property rates at commercial rates.

There is a substantial change in the meaning of 'residential property' in terms of the Bill. Unlike the current Act, which vaguely refers to the valuation roll for the meaning of 'residential property', the Bill seeks to exclude from the meaning of 'residential property' all property 'that is used to accommodate persons other than the owner for gain'. The effect of this proposal is that property that may otherwise qualify to be residential property, but is let out or occupied for gain, will no longer be classified as 'residential property'. Therefore while the Bill provides that municipalities must treat all residential properties alike, this does not apply to residential property that is occupied 'for gain', which may be subjected to a different rate.

What rate is then applicable to such a property that is 'occupied for gain'? What happens in the case of property that is only let out for a certain part of the year, like holiday residences? Is a differential formula for determining rates used? Clearly 'property occupied for gain' does not fall into the category of 'business or commercial property', as defined in the Bill, and will therefore not attract commercial property rates. However, properties let out by homeowners, being excluded from the 'residential property' category, may fall under the Bill's definition of 'multiple purposes' property and may thus be levied differently from residential property.

4. MINISTER'S POWER TO CAP A MUNICIPAL RATE

Section 16(2) of the Municipal Property Rates Act provides that where a municipality adopts a rate that would materially and unreasonably prejudice national economic policies, economic activities across its boundaries or the national mobility of goods, services, capital or labour, the minister responsible for Local Government may, after conferring with the Minister of Finance, limit the rate that municipalities may impose on a particular category of properties. Section 16(3) makes provision for any sector of the economy, through its organised structures, to request the minister to limit the rate imposed on a particular category of properties. In *KwaZulu-Natal Agricultural Union v the Minister of Cooperative Governance and Traditional Affairs and Others (2943/09) [2011] ZAKZPHC 21 (KwaZulu-Natal Agricultural Union)* the KZN Agricultural Union challenged the decision by the Minister not to cap the rate in the rand applicable to agricultural land in all municipalities across

KwaZulu-Natal. The law prescribes that the Minister must be presented with evidence that the rate imposed on a category of properties does indeed cause 'prejudice'.

The Court held the Minister's power to set a limit to a specific rate should not be lightly invoked. Furthermore, any application for the capping of a rate must relate to a rate that has already been adopted by a specific municipality. The Minister cannot impose a blanket limitation on every municipality in a province because the specific circumstances and policy considerations pertaining to each of them may differ. The Court also held that the Minister was correct in taking into account the possibility of rebates because, so the Court argued, such rebates can reduce or even eliminate 'prejudice' caused by a particular rate. The Court further noted that the absence of a rebate may be a ground to invoke section 16(3).

5. COMMENT

Municipal property rates are a vital source of revenue for Local Government and serve as an avenue for demanding accountability and responsiveness from Local Governments. Open dialogue and meaningful engagement by the Ministry and stakeholders, as suggested by the Deputy Minister will ensure that public views are incorporated before the Bill is enacted into a law.

6. LINKS

Proposed amendments

<http://www.info.gov.za/view/DownloadFileAction?id=147257>

News articles:

<http://www.citizen.co.za/citizen/content/en/citizen/local-news?oid=211176&sn=Detail&pid=334&Dept-in-bid-to-allay-property-fears>

<http://www.moneyweb.co.za/mw/view/mw/en/page299360?oid=547884&sn=2009+Detail&pid=299360>

<http://www.dieburger.com/Suid-Afrika/Nuus/Slordige-huurwet-skep-vrese-20110720>

Caselaw

Link to the *KwaZulu-Natal Agricultural Union v the Minister of Cooperative Governance and Traditional Affairs and Others (2943/09) [2011] ZAKZPHC 21 (KwaZulu-Natal Agricultural Union)*: <http://www.saflii.org/za/cases/ZAKZPHC/2011/21.html>

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