

Non-compliance

WITH THE MUNICIPAL PROPERTY RATES ACT

The Municipal Property Rates Act empowers an MEC to condone any non-compliance by a municipality with a provision that imposes time frames.

Condonation may be given only on good cause shown and the MEC may impose conditions. However, the MEC must exercise this power within a framework prescribed by the Minister responsible for local government, which was issued by the Minister on 29 April 2009.

Scope for condonations

The scope for condonation includes, for example, the period within which the municipal valuer must hand over the valuation roll to the municipal manager. By 31 January a valuer must hand over the roll for implementation on 1 July of that year. For a supplementary roll the deadline is 31 March.

It is noteworthy that certain time limits are set in stone and no extension may be condoned. They are the compulsory phasing in of newly rateable properties over three years; the valuation date, which must be within a year of the date of implementation; and the commencement and the four-year period of validity of valuation rolls.

Nor can the four-year implementation period of the Act be extended. Old valuation rolls may be used during the four-year transition period from 1 July 2005, but the transitional provision falls away on 30 June 2009. After that date no property rates may be levied on old valuation rolls. If a municipality has not created valuation rolls in terms of the Property Rates Act by 30 June 2009, it may not impose any property rates whatsoever. The Regulations also make it clear that a condonation “may not be construed as condonation or justification of any expenditure that may be considered as fruitless and wasteful expenditure incurred by the municipality”.

Framework

When receiving an application for condonation from a

municipality, an MEC must first consider the effect of the condonation on the fair and effective administration of the Act. Does it promote good governance or condone laxity? Second, has the municipality made out a good case? Third, what institutional, financial and other matters have a bearing on the municipality’s capacity to discharge its duties regarding the implementation of the Act? Does it have the capacity to comply with the time frames? Fourth, has it progressively been making improvements in complying with the Act’s requirements about meeting time frames? Importantly, has the municipality, where applicable, fulfilled previously imposed conditions? Finally, the MEC may consider any other matter that may be relevant to the issue but that is not inconsistent with the Act.

Process

The framework also prescribes the process that a municipality should follow when applying for condonation. In a case in which the valuer will not be able to hand over the valuation roll by 31 January, as soon as the municipality becomes aware that it will fail to meet the deadline it must apply to the MEC for condonation. If the deadline has been missed, the application must reach the MEC by no later than 31 March.

Comment

First, the framework provides a broad enabling environment in terms of which the MECs can exercise their discretion. Second, the condonation of non-compliance with time frames has limited application. It does not relate to key time frames such as the implementation of the Act or the phasing in of new rateable properties. Third, MECs should condone time frames with great circumspection. If they grant condonation too readily, then they will undermine the necessary discipline the Property Rates Act imposes on municipalities. That would promote laxity and a disregard of essential time frames. Condonation should only be given if ‘good cause’ is shown. There must be good reasons for failing to meet statutory time frames. Bad planning and poor administration are not good reasons.