

In regulations issued by the Minister for Provincial and Local Government, limits are placed on the property rates that may be imposed on agricultural land and public service infrastructure.

The Minister may prescribe a ratio between the rate on residential property and that on any non-residential properties. In terms of the regulations the rate on agricultural properties may not be more than 25% of that imposed on residential properties. Agricultural properties are defined as farm properties used for agricultural purposes, farm properties not used for any purpose, or smallholdings used for agricultural purposes. The term 'agricultural purpose' excludes the use of a farm property for the purpose of ecotourism or for the trading in or hunting of game.

The same ratio is applicable to public service infrastructure (PSI) properties: the rate on PSI may not be more than 25% of that on residential property. The Municipal Property Rates Act has a long definition of PSI, which includes national and provincial roads, water and sewer pipes, dams, water treatment plants, power stations, gas or liquid fuel plants, railway lines, communication towers, runways and aprons. It should also be remembered that once a PSI has been valued (at its market value), there is a mandatory 30% reduction on the value. Thus the rate (which may not be more than 25% of the rate on residential property) is applied to 70% of the market value of the property.

Date of commencement

The regulations take effect on 1 July 2009 although they were only issued on 27 March 2009, three months and four days before the new financial year commences. In order to assist municipalities in the proper drafting of a budget, the Municipal Finance Management Act (MFMA) seeks to prevent last-minute determinations of upper limits on tax and tariffs by national and provincial departments. If the determination is made before 15 March of a year, it may not be implemented before 1 July of that year. If done after 15 March, then the determination can only be implemented in the following financial year. In both cases the Minister of Finance may, on good grounds, allow a shorter period. Because the regulations determine an upper limit on rates, which are a tax, the Minister responsible for local

Upper limits for property rates

ON AGRICULTURAL LAND AND PUBLIC SERVICE INFRASTRUCTURE

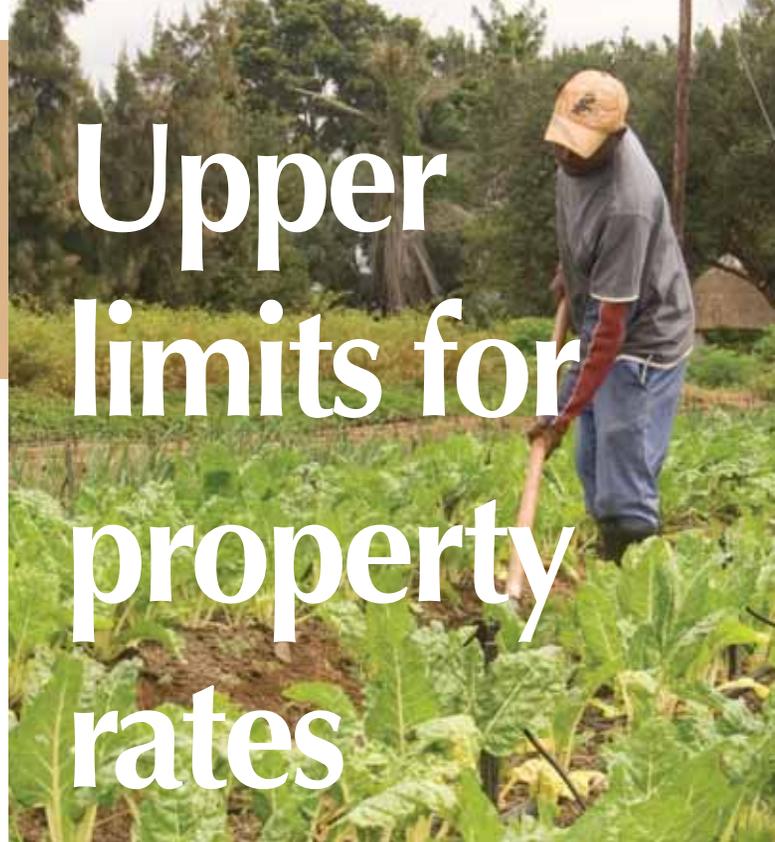




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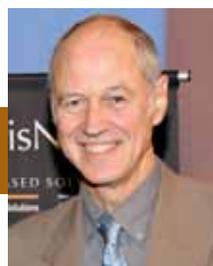
government is bound by the provision in the MFMA. Moreover, because the regulations were issued on 27 March 2009, they would normally have come into operation only on 1 July 2010, unless the Minister of Finance, on good grounds, determined otherwise. The Minister of Finance has now determined in a notice that the new regulations will become effective for municipalities as from 1 July 2009.

Implications

As the regulations take effect on 1 July 2009, municipalities must bring their rates resolution for the 2009/10 financial year into line with this limitation. It should be noted that these regulations only set a maximum. Municipalities may set the rate for agricultural properties at a lower rate than 25%. Some municipalities have set it at 10% of the residential property rate. In the case of PSI, no rates have to be imposed. Because PSI properties pose significant difficulties to valuers (see *LGB11(1)*, February/March 2009(1), p 27), municipalities have an option not to value PSI if they do not plan to levy a rate on them.

When the Department of Provincial and Local Government (DPLG) first published draft regulations in December 2007 proposing rate ratios between residential and a wide range of non-residential categories of properties, there was strong opposition from local government. One of the reasons was that rates on state-owned properties may not be more than 25% of the rate on residential properties. Apart from questions about the rationality of the ratios proposed, it was argued that by imposing a very low maximum on the rate for state-owned properties, the national government may compromise or impede a municipality's ability or right to exercise its powers or to perform its functions within the meaning of section 151(4) of the Constitution. For a variety of reasons, therefore, DPLG did not persist with the draft regulations.

The new regulations are much more nuanced and cannot be criticised for limiting local government's revenue-raising powers unreasonably. They have identified two categories of property that may be vulnerable to being overburdened by property rates. Moreover, practice shows that the 25% cap is much more generous than the rate that municipalities usually impose.



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