Property rates

LATEST DEVELOPMENTS

Property rates, as a form of tax imposed on the market value of land and buildings, are the key source of revenue for municipalities. The framework for the imposition of property rates is carefully regulated by the Municipal Property Rates Act (Act 6 of 2004) (MPRA), which provides municipalities with a measure of discretion in determining and levying property rates in a localised context. The imposition of property rates is, however, subject to national limits or maximums. This article discusses some recent developments with regard to these maximums (ratios), as well as the suggested amendments to the MPRA.

key points

- When imposing property rates, municipalities must comply with national ratios between the residential rate and rates on certain protected categories of property.
- The recent addition of 'public benefit organisation property' to the list of protected categories has been the subject of controversy.
- CoGTA has commenced a process of public consultation on possible amendments to the Municipal Property Rates Act.
- These amendments may deal with further exclusions from property rating, how to rate mines and a tighter system of ratios.

The MPRA provides that the Minister for Cooperative Governance and Traditional Affairs (CoGTA) may determine ratios between the residential category and other categories of property. Municipalities may, in this respect, not levy a rate higher than the maximum determined in the national ratio.

The Minister recently promulgated new ratios, in the 2010 Amended Municipal Property Rates Regulations on the Rate Ratios between Residential and Non-Residential Properties. The amended regulations provide for different ratios of property rates between non-residential and residential property. The residential property rate ratio is 1:1, while the agricultural property, public service infrastructure property and public benefit organisation property rate ratios are 1:0.25. The new regulations have thus added public benefit organisation property as a newly protected category.

Section 8(2)(q) of the MPRA defines 'public benefit organisation property' as a property 'owned by public benefit organisations and used for a specified public benefit activities' listed in item 1 (welfare and humanitarian), item 2 (health care) and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act.

The debate about private schools

The new ratios were prompted by a court action against the Minister of CoGTA, the Minister of Finance and the South African Local Government Association by the Independent Schools Association of Southern Africa (ISASA). ISASA argued that its members were 'public benefit organisations' as they fell within the definition of 'school' in terms of the South African Schools Act (Act 84 of 1996). They insisted that, as such, they should be protected by national ratios. The two Ministers settled the matter with ISASA by promulgating a ratio for all public benefit organisations.

SALGA disagreed and argued that ISASA members operated private schools as businesses, and therefore should not be viewed as public benefit organisations. They generated income from which they were able to pay for municipal services. Affording them protection over other property categories was

therefore not fair to other ratepayers. Moreover, SALGA argued, the regulations would undermine the discretion of municipalities to regulate the rating of property by determining criteria in their rates and policies applicable to different categories of properties. In keeping with these arguments, SALGA urged the Minister not to promulgate the regulations as a fixed ratio. However, according to CoGTA, SALGA's recommendations were submitted two months *after* the ratio was promulgated, despite the fact that the Minister had requested their inputs on the substance of the regulations 30 days prior to promulgating them.


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The Institute of Municipal Finance Officers (IMFO), like SALGA, supports the view that ISASA members are schools that are generally run as businesses, some of which are actually listed as companies. In fact, according to IMFO, some municipalities have already requested public benefit organisations seeking rebates to provide their financial statements to ensure that rate benefits are granted to those who require them and not to those who clearly have the ability to pay.

For now it seems that the debate has been settled in favour of ISASA, as all public benefit organisations are now protected by a 25% ratio. However, section 8 of the MPRA provides that municipalities have discretion in choosing property rates categories for differential rating. They are not obliged to include 'public benefit organisations' as a distinct category in their property rates policies. If they do, that category is subject to the 25% ratio. If they do not, the 25% ratio misses its target and does not apply. It is this aspect of the law, and a range of other issues, which the Minister seeks to address in possible amendments to the MPRA.

The agenda for debate on the MPRA

CoGTA has commenced a process of public consultation on possible amendments to the MPRA. The agenda with respect to the proposed amendments incorporates the exclusion of the poor from rating, the exclusion of public service infrastructure, places of worship and communal areas, the regulation of property categories, redefining the MEC's role, the rating of mining property, group applications for rate relief and the quality of valuation.

Excluding the poor from rating

CoGTA proposes to amend the MPRA to exempt the poor from paying property rates. Vulnerable citizens would then be exempt according to an income threshold, determined by the Minister of Finance, that identifies poor households . This threshold would be determined on an annual basis and would provide relief to vulnerable residents across South Africa.

Excluding public service infrastructure

Certain types of public service infrastructure (PSI) serve a developmental role. Currently, the first 30% of the market value of PSI is excluded from rating. CoGTA proposes to exclude PSI (roads, railways, airport aprons and runways, breakwaters and dams) from rating altogether.

Excluding places of worship

Despite the fact that places of public worship and related residences are excluded from rating in terms of the Act, there have been different interpretations of the Act with regard to places of worship or properties linked to these places of worship. This has resulted in various approaches, which differ from municipality to municipality and in rating perspectives in respect of places of worship. CoGTA proposes to define places of worship and related residences to ensure that misinterpretations in this respect are done away with and to bring certainty for owners of these properties, so that clarity may prevail and all such properties are treated appropriately and in the same manner by all municipalities.

Communal areas

Most municipalities, with the exception of some municipalities in KwaZulu-Natal, do not value and rate communal areas. CoGTA is asking for input on the correct way forward with regard to the rating of communal areas – that is, whether they should be excluded from property rates.

Tighter regulation of property categories

As highlighted above, the basis for the determination of property categories by municipalities is currently open-ended. Municipalities may choose a method of determining property categories (ie according to use, permitted use or geographical area) and may use the categories provided for in section 8 of the MPRA. However, nothing compels them to use any or all of the categories in the Act (aside from the obvious categories such as residential, agricultural, business and industrial). Municipalities that do not use the categories in the Act escape the Minister's ratios on those categories. CoGTA proposes to change the Act to ensure that the Minister can, in future, effectively regulate the ratios between property categories.

Redefining the MEC's role

CoGTA takes the view that provinces have not been provided with sufficient tools to monitor and support property rating by municipalities. The proposed legislation provides for more details on the role of the MEC responsible for local government in monitoring, supporting and, where necessary, intervening in a municipality.

How to rate mining properties

CoGTA also proposes to provide clarity with respect to whether 'above surface improvements' related to mining activities should be valued. In addition, CoGTA intends to clarify who is liable for paying rates for mining properties, namely the holder of the mining right or the owner of the property, in cases where the two are not the same person or entity.

How groups may apply to the Minister for rates relief

CoGTA furthermore proposes to provide for a cut-off date for applications from groups or sectors of the economy with respect to relief from specific rates imposed by a municipality. CoGTA suggests requiring that any such application be submitted not more than 12 months after the rates in question were imposed by the municipalities.

Photo: Graeme Williams, MediaClubSouthAfrica.com

Quality of valuation

Finally, CoGTA poses the question: is there, in fact, a need to amend the Act to deal with the quality of valuations, as they tend to vary greatly across municipalities?

It is clear that changes to the legal framework for municipal property rates are under way. CoGTA has been engaging stakeholders and the public on these matters and intends to table amendments to the MPRA in Parliament in the second half of 2010. Municipalities are advised to follow this important process critically and make their voices heard.

This article is based on *A Guide to the Draft Municipal Property Rates Act Amendments* by CoGTA, as well as on the submissions made by IMFO and SALGA on the 2010 ratios. Readers are invited to engage CoGTA on the suggested changes to the MPRA via Ms Veronica Mafoko on e-mail mpra@cogta.gov.za

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