



**LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO.6 OF 2004
CIRCULAR NO. 07 (ISSUED ON 15 DECEMBER 2014)**

**CIRCULAR ON SPECIFIC PROVISIONS OF THE MUNICIPAL PROPERTY RATES
AMENDMENT ACT (2014)**

INTRODUCTION

The Municipal Property Rates Amendment Act 2014 (“the Amendment Act”) was assented to by the President on 15 August 2014 and was published in the *Government Gazette* No. 37922 on 18 August 2014. In terms of section 36 of the Amendment Act, the President by proclamation, determined 1 July 2015 as the date on which the Amendment Act shall come into operation. The proclamation was published in *Government Gazette* No. 38259 on 28 November 2014.

The purpose of this Circular is to communicate critical provisions of the Amendment Act and related matters which require explanation to facilitate implementation. Where necessary this Circular will explain those key provisions of the Amendment Act and explain what is expected for municipalities to comply with those provisions.

The provisions of the Amendment Act and related matters that are addressed in the Circular are the following:

- Sections 4 and 10: By-laws to give effect to the rates policy and the promulgation of resolutions levying rates;

- Section 3(b): Rates policy criteria for increasing or decreasing rates
- Sections 3(e) and 3(3)(k): Treatment of agricultural property in the rates policy;
- Section 14: Applicability of the definition of 'ratio' in relation to section 19 of the Act;
- Section 13 and 35: Prohibition on the rating of certain public service infrastructure and the phasing in of the said prohibition;
- Section 13: Treatment of improvements incidental to mining operations above the surface of the mining property;
- Sections 32 and 33: Transitional arrangements relating to the redetermination of municipal boundaries;
- Sections 6 and 35: New property categorisation framework and the related transitional arrangements; and
- Section 19: Differentiation in the period of validity of valuation rolls between metropolitan and local municipalities and the related request for the extension of the period of validity of valuation rolls.

BY-LAWS TO GIVE EFFECT TO THE RATES POLICY AND PROMULGATION OF RESOLUTIONS LEVYING RATES: PROTECTING MUNICIPAL BUDGETS

In terms of section 162 of the Constitution and section 13 of the Municipal Systems Act a *municipal by-law may be enforced only after it is published in the relevant Provincial Gazette*. Accordingly, to give effect to the constitutional imperative, section 4 of the Amendment Act aligns section 6(1) of the principal Act as follows:

"A municipality must adopt and publish by-laws, in terms of sections 12 and 13 of the Municipal Systems Act, to give effect to the implementation of its rates policy."

Section 10 of the Amendment Act amends section 14 of the principal Act by substitution as follows:

"(2) (a) A resolution levying rates in a municipality must be annually promulgated, within 60 days of the date of the resolution, by publishing the resolution in the Provincial Gazette.

(b) The resolution must—

(i) contain the date on which the resolution levying rates was passed;

(ii) differentiate between categories of properties; and

(iii) reflect the cent amount in the Rand rate for each category of property."(Our emphasis)

The Local Government: Municipal Property Rates Act No. 6 2004 Circular No. 6 (issued on 10 April 2014) provides detailed information in pages 2-7 on how to implement sections 6 and 14 of the principal Act correctly. Specimen of rates by-law and resolution levying rates were also attached to the said Circular.

The implications of non-compliance with the above provisions are that it is possible that a municipality's property rates budget may be challenged in court with a view to set the property rates component of the municipal budget aside. To mitigate against the risk of legal challenges as a result of non-compliance, the municipal manager and chief financial officer should establish and maintain effective oversight mechanisms to ensure that municipal officials publish the Council approved property rates by-law and resolution levying property rates in the *Provincial Gazette* promptly after the Council has approved these. These administrative actions are the basics of administering the property rates function of a municipality. Failure to undertake these basic administrative actions can deprive the municipality of the legal basis to impose and collect property rates.

CRITERIA FOR INCREASING OR DECREASING RATES IN THE RATES POLICY

Section 3(b) of the Amendment Act amends section 3(3)(b)(iv) of the principal Act by requiring that a municipality determines criteria to be applied if rates are decreased. This amendment was included to explicitly draw the attention of municipalities to the fact that instead of focussing only on increasing rates, municipalities must be mindful of the need to decrease rates where applicable. The decrease in rates is of particular importance when a new valuation roll is implemented and the market values of properties have increased significantly. This exercise can prevent unnecessary outcry by ratepayers as a result of rates accounts that are increased significantly if cent in the Rand rates are not adjusted downwards with the implementation of a new valuation roll.

Section 12 (2) of the principal Act states the following:

“(2) The levying of rates must form part of a municipality’s annual budget process as set out in Chapter 4 of the Municipal Finance Management Act. A municipality must annually at the time of its budget process review the amount in the Rand of its current rates in line with its annual budget for the next financial year. (Our emphasis)

In undertaking the mandatory annual review of the cent in the Rand rates, a municipality must take the market values of properties in the valuation roll and how these ultimately impact on the rates payable by ratepayers. A municipality must not focus only on the financial needs of the municipality; these must be balanced with the affordability of rates for the ratepayers. A balanced approach will also result in better relations with ratepayers.

TREATMENT OF AGRICULTURAL PROPERTY IN THE RATES POLICY

The definition of “agricultural purpose” is substituted with a definition for ‘agricultural property’ as follows:

“‘agricultural property’ means property that is used primarily for agricultural purposes but, without derogating from section 9, excludes any portion thereof that is used commercially for the hospitality of guests, and excludes the use of the property for the purpose of eco-tourism or for the trading in or hunting of game;”

Section 3(e) of the Amendment Act deletes subsection 3(4) of the principal Act and a new subsection 3(3)(k) is inserted. The newly inserted provision requires that a municipality’s rates policy must give effect to the Regulations on the Rate Ratios between Residential and Non-Residential Categories of Properties (“the Regulations”). The Regulations prescribe a ratio of 1:0.25 between residential and agricultural properties. The deletion of section 3(4) is intended to protect municipalities from obligations that may be imposed on them by property owners (particularly organised agricultural property owners) to provide for exemptions, rebates and reductions over and above the protection that is provided for agricultural properties in the Regulations. The agricultural property ratio in the regulations takes into account the matters that are contained in the deleted subsection 3(4), therefore there is no further obligation on a municipality to give further rebates, exemptions or reductions over and above the prescribed ratio.

THE DEFINITION OF 'RATIO' IN RELATION TO SECTION 19 OF THE ACT

Section 14 of the Amendment Act amends section 19 of the principal Act to allow for a deviation with respect to differential rating of residential property. For the first time residential property which is vacant can be rated differently to residential property which is not vacant

A definition for 'ratio' as referred to in section 19 of the principal Act is inserted as follows:

“ ‘ratio’, in relation to section 19, means the relationship between the cent amount in the Rand applicable to residential properties and different categories of non-residential properties: Provided that the two relevant cent amounts in the Rand are inclusive of any relief measures that amount to rebates of a general application to all properties within a property category;” (Our emphasis)

The definition was inserted to clarify the meaning of ratio as well as prevent any ambiguity in the interpretation of the term on the part of any municipality, property owner, member of the public or any other interested party. The definition is inserted to provide clarity and certainty in the application of the Act in this regard. The ratio is based on the effective rates (i.e. the base rate less relief measures that amount to rebates of a general application) applicable to the two property categories in question, to ensure that the 'ratio' is a fair reflection of how the two property categories in question are in truth being subjected to differential rating. The definition makes it clear that the following relationship is applicable in the ratio:

$$\mathbf{ratio} = \frac{\mathbf{(cR (other property category) - (rebates))}}{\mathbf{(cR (residential property) - (rebates))}}$$

where: "cR" is the cent in the Rand rate;

"rebates" are those of a general application to the specific property category; and
"other property category" is either agricultural, public service infrastructure or public benefit organisation property as prescribed in the Regulations on the Rate Ratios between Residential and Non-Residential Properties.

PROHIBITION ON THE RATING OF CERTAIN PUBLIC SERVICE INFRASTRUCTURE AND THE 5-YEAR PHASING IN OF THE PROHIBITION

Section 13 of the Amendment Act amends section 17(1) through the insertion of a new sub-section aA which prohibits the rating of any property referred to in paragraphs (a), (b), (e), (g) and (h) of the definition of 'public service infrastructure'. These are the following components of public service infrastructure:

(a) National, provincial or other public roads on which goods, services or labour move across a municipal boundary;

(b) water or sewer pipes, ducts or other conduits, dams, water supply reservoirs, water treatment plants or water pumps forming part of a water or sewer scheme serving the public;

(e) railway lines forming part of a national railway system;

(g) runways, aprons and the air traffic control unit at national or provincial airports, including the vacant land known as the obstacle free zone surrounding these, which must be vacant for air navigation purposes;" (as amended by section 1(k) of the Amendment Act); and

(h) breakwaters, sea walls, channels, basins, quay walls, jetties, roads, railway or infrastructure used for the provision of water, lights, power, sewerage or similar services of ports, or navigational aids comprising lighthouses, radio navigational aids, buoys, beacons or any other device or system used to assist the safe and efficient navigation of vessels.

In order to properly manage the impact of the prohibition on the rating of the above-mentioned five components of public service infrastructure on municipal budgets, section 35 of the Amendment Act provides for transitional arrangements through the insertion of section 93A, which reads as follows:

"Transitional arrangement: Public service infrastructure

93A. (1) The prohibition on the levying of rates on public service infrastructure referred in section 17(1)(aA) must be phased in over a period of five municipal financial years, with effect from the date of commencement of this Act.

(2) The rates levied on property referred to in subsection (1) must—

- (a) in the first year, be no more than 80 per cent of the rate for that year otherwise applicable to that property **(meaning that 20% is not rateable in 2015/16)**;
- (b) in the second year, be no more than 60 per cent of the rate for that year otherwise applicable to that property **(meaning that 40% is not rateable in 2016/17)**;
- (c) in the third year, be no more than 40 per cent of the rate for that year otherwise applicable to that property **(meaning that 60% is not rateable in 2017/18)**;
- (d) in the fourth year be no more than 20 per cent of the rate for that year otherwise applicable to that property **(meaning that 80% is not rateable in 2018/19)**; and
- (e) in the fifth year, be no more than 10 per cent of the rate for that year otherwise applicable to that property.” **(meaning that 90% is not rateable in 2019/20)**.

The words in parenthesis that are in bold are our emphasis for explanatory purposes.

Therefore, in the 2020/21 municipal financial year, it will be impermissible (completely prohibited) to rate the above-mentioned five components of public service infrastructure.

TREATMENT OF IMPROVEMENTS THAT ARE INCIDENTAL TO MINING OPERATIONS ABOVE THE SURFACE OF MINING PROPERTY

Section 13 of the Amendment Act amends section 17(1)(f) of the principal Act by substituting “mineral rights’ with “mining rights” to make the Act compatible with the relevant mining legislation. In addition, by excluding “*any building, other immovable structures and infrastructure above the surface of the mining property required for purposes of mining*” from the ambit of section 17(1)(f) of the Act, it is now permissible for municipalities to rate these kinds of properties. The amended definition of “owner” makes these rateable in the hands of the holder of the mining right or mining permit. This means that in the case where the holder of the mining right or mining permit and the owner of the surface land

beneath which the mining operations take place are different persons, the owner of the surface land will bear no rates liabilities with respect of these kinds of improvements.

NEW PROPERTY CATEGORISATION FRAMEWORK AND RELATED TRANSITIONAL ARRANGEMENTS

Section 6 of the Amendment Act amends section 8 of the principal Act by substitution whilst section 35 of the Amendment Act inserts a new section 93B, providing for transitional arrangements to phase in the new provisions of section 8. Section 93B states that *“The provisions of section 8 must be applied by a municipality within seven years of the date of commencement of this Act”*. The objective of having the transitional provisions is to properly manage the transition from the current to the new property categorisation framework by aligning that transition to the implementation of a new valuation roll by a municipality.

These transitional provisions give a municipality space to phase in the new provisions of section 8 with a new valuation roll, provided that the new provisions are implemented not later than 1 July 2021. On the commencement date of the Amendment Act, 1 July 2015, there will not be a legal obligation for a municipality to determine property categories (for example, public service purposes) in terms of the new section 8; a municipality will implement these provisions when it implements a new valuation roll as long as this is done by not later than 1 July 2021.

TRANSITIONAL ARRANGEMENTS RELATING TO THE REDETERMINATION OF MUNICIPAL BOUNDARIES

The transitional arrangements in sections 32 and 33 of the Amendment Act allow a municipality that is affected by the redetermination of a municipal boundary through the inclusion of an area or areas into the existing area of jurisdiction of that municipality to continue levying rates by using existing valuation rolls and supplementary valuation rolls as well as existing rates policies and related by-laws that were applicable in the incoming

municipal areas until the municipality compiles a comprehensive valuation roll covering the new areas of jurisdiction as re-demarcated.

The transitional arrangements in sections 32 and 33 do not cater for instances where two or more municipalities are disestablished and merged to constitute a new municipality (such as is likely to be the case in Gauteng and KwaZulu-Natal). In such cases, the provisions of sections 12 and 14 of the Municipal Structures Act must be applied by the MEC responsible for local government in an affected province. The affected provincial departments responsible for local government are advised to provide for transitional arrangements in this regard in the establishment notices that are promulgated by the MEC in terms of section 12 of the Municipal structures Act. This will ensure that the affected municipalities can levy rates within an appropriate legal framework. It is therefore proposed that the provincial departments responsible for local government insert similar provisions as those contained in sections 32 and 33 of the Amendment Act in the section 12 establishment notices to legalise the use of existing valuation rolls, supplementary valuation rolls rates policies and property rates by-laws in such cases, until the newly established municipality implements a new valuation roll, rates policy and property rates by-law that is applicable to the newly established municipality.

DIFFERENTIATION IN THE PERIOD OF VALIDITY OF VALUATION ROLLS BETWEEN METROPOLITAN AND LOCAL MUNICIPALITIES

Section 19 of the Amendment Act amends section 32 of the principal Act to allow for differentiation in the maximum validity period of valuation rolls between metropolitan and local municipalities. First, it allows for local municipalities' valuation rolls to be valid for up to five years whilst those of metropolitan municipalities remain valid for up to four years.

Secondly, on request by the municipality, in other exceptional circumstances which warrant such extension, the MEC for local government in a province may extend the period of validity of a valuation roll in the case of a metropolitan municipality, from four to five financial years; and for a local municipality, from five to seven financial years.

Thirdly, where the provincial executive has intervened in a municipality in terms of section 139 of the Constitution, the MEC for local government in a province may extend the period of validity of a valuation roll in the case of a metropolitan municipality from four to six financial years; and for a local municipality, from five to seven financial years.

These new provisions become effective on 1 July 2015 and they **do not affect the status of those municipal valuation rolls which expire on 30 June 2015**, nor do they allow the MEC for local government in a province to extend the period of validity of a municipality's valuation according to these provisions in the current financial year (the 2014/15 municipal financial year). Until 30 June 2015, the MEC may grant extensions in terms of section 32(2) of the principal Act as it is currently, that is, he/she is permitted to grant extensions for one additional year as is currently provided for in the principal Act.

Request for the extension of the period of validity of a valuation roll and related process:

Section 34(d) states that *"The valuer of a municipality must in accordance with this Act - (d) submit the valuation roll to the municipal manager **within a prescribed period.**"* Regulation 3(1) of the Municipal Property Rates Regulations, 2006, states that *"The period for the submission of valuation roll as contemplated in section 34(d) of the Act is **five months before** the effective date of such a valuation roll."*

Given that a valuation roll forms part of the overall municipal budget process, it is recommended that as soon as a municipality becomes aware of the emergence of "exceptional circumstances" which warrant it to apply for the extension of the period of validity of its valuation roll, it should immediately **after a Council resolution** in this regard, submit a request to the MEC for the MEC to exercise his or her decision timeously and revert back to the municipality. The provincial department responsible for local government must ensure that the MEC communicates his or her decision timeously so that the municipal budget process, including the budget to be tabled in terms of section 16(2) of the Municipal Finance Management Act takes this into account. A late municipal request and/or late decision thereto is not conducive for a smooth budget process.

Given that a request for extension of the validity of the valuation roll constitute an early warning indication that things are not going smoothly in the municipality, the Council resolution must also include the proposed implementation programme (implementation milestones) in support of how the municipality intends to manage the valuation roll compilation process to its logical conclusion up to and including the public inspection of the valuation roll. The municipality must establish a Project Steering Committee which must meet monthly or quarterly and report to the appropriate Committee of the municipality about progress being made. The composition of the Project Steering Committee should include a representative of the province, if the province will be in a position to participate. At the meetings, the Municipal Manager, Chief Financial Officer or their designated representatives as well as the designated Municipal Valuer must report against their implementation timetable/programs. Furthermore, a report must be provided to the province after each meeting of the Project Steering Committee. The role of the province is not merely to approve an extension request, but has also to track progress being made as well.

CONTACT PERSON

Should municipalities require any further information on matters dealt with in this Circular, request for such information should be directed to the Department of Cooperative Governance for the attention of:

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