cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO.6 0F 2004
CIRCULAR NO. 12 (ISSUED ON 16 FEBRUARY 2021)

REPLACES CIRCULAR NO.6 ISSUED ON 10 APRIL 2014

TO ALL:

MUNICIPAL MANAGERS

MUNICIPAL CHIEF FINANCIAL OFFICERS

CIRCULAR ADVISING MUNICIPALITIES TO CORRECT NON-COMPLIANCE WITH SECTIONS 9 AND 19 OF THE ACT

This Circular replaces Circular No.6 issued on 10 April 2014 pertaining to compliance with sections 9 (properties used for multiple purposes) and 19 of the Municipal Property Rates Act ("the Act") is concerned; specifically impermissible differentiation between residential properties and unreasonable discrimination between non-residential property categories; the related Regulations on the rate Ratios between residential and Non-Residential Categories of Property issued in terms of section 19 of the Act.

The purpose of this Circular is to provide municipalities with practical advice in respect of how to comply with the two provisions which have emerged as matters with which there has been persistent non-compliance over time.

This Circular will explain what, in terms of compliance as contemplated in these provisions is expected, what in practice is done incorrectly by municipalities in attempting to comply with those provisions, as well as what the correct administrative actions that will result in compliance are in that regard.

1. Compliance with Section 9 of the Act: Properties used for multiple purposes

Section 9 of the Act effectively outlines the way properties used for multiple purposes must be assigned to a property category and how they must subsequently be rated. It must be stated that the provisions of section 9 do not amount to guidelines but they are prescriptive. Failure to follow the provisions of section 9 amounts to non-compliance with the Act. They direct that a municipality must apply any of the three approaches to categorise properties used for multiple purposes. Section 9(1) reads as follows:

"A property used for multiple purposes must, for rates purposes, be assigned to a category determined by the municipality for properties used for-

(a) a purpose corresponding with the permitted use of the property;
(b) a purpose corresponding with the dominant use of the property; or
(c) multiple purposes in terms of section 8(2)(i)"

The section goes further to provide that if a rate is levied on property categorised in terms of section 9(1)(c), then the rate levied on that property must be determined by apportioning the market value of the property to the different purposes for which the property is used and applying the rates applicable to the categories determined by the municipality for properties used for those purposes corresponding to the different market value apportionments.

A municipality must indicate the basis in terms of which properties used for multiple purposes will be categorised for rates purposes, in its rates policy, in a manner that makes it clear and is unambiguous to property owners and any interested person. A municipality can apply any one or a combination of the category assignments (listed in section 9(1) of the Act) to properties used for multiple purposes. Furthermore, a municipality **may not apply a combination of**

approaches listed in section 9(1) to one specific property. For example, a municipality may not apply the apportionment of market value approach (section 9(1)(c)) and combine it with the dominant use approach (section 9(2)) on one property.

The application of a category assignment for properties in terms of section 9(1)(c) is dependent on the nature of the combination of uses on the property. For example, on certain properties such as a property on which a national park or a nature reserve is proclaimed, the dominant use approach may not be appropriate because once the nature reserve is proclaimed, the remainder of the rateable portions (refer to section 17(1)(e) of the Act) may be made up of structures that are used for a number purposes, including residential, commercial and other uses which in their own right may constitute separate property categories. In such a case the values would be apportioned to their different uses and rates would be applied to the different uses.

2. Compliance with Section 19 of the Act: Impermissible Differentiation

This section of the Circular addresses the following matters:

(i) Prohibition on imposing different rates on residential property (subsection 19(1)(a) of the Act); and

(ii) The Regulations on the Rate Ratios Between residential and Non-Residential Categories of Property (subsection (19(1)(b) of the Act).

(iii) Rates which unreasonably discriminate between categories of non-residential properties.

(i) Prohibition on imposing different rates on residential property

In terms of section 19(1)(a) of the Act, a municipality may not levy different rates on residential properties (except those that are vacant) outside the specific deviations outlined in that section. This means that under no circumstances or justification outside

the specific deviations outlined in that section can a municipality impose different rates on residential property as such an action would amount to impermissible differentiation (that is, it is an illegal action). It has been found that some municipalities flout the provisions of section 19(1)(a).

The cent in the Rand rate for all residential properties must, except with respect to the specific deviations explicitly outlined in section 19(1)(a) of the Act, therefore be uniform because any other differentiation (regardless of any motivation thereof) is not allowed. This does not mean that categories of owners of residential property (for example, indigents) cannot be granted rebates or reductions; however this must be done on the basis of criteria set out in the rates policy and should be consistent with section 15(2) of the Act. With respect to any other rebates or reductions that are not applicable to specific categories of owners of property these should be of a general application as no relief measure should have the consequence of circumventing the provisions of section 19(1)(a) of the Act. In actual effect, if a municipality determines effective cent amount in the Rand rate (which is much more user friendly), there is no need for rebates of a general application to a property category.

(ii) The Regulations on the Rate Ratios Between residential and Non-Residential Categories of Property ((19(1)(b))

Section 19(1)(b) of the Act provides that ratios between residential and non-residential categories of property may be prescribed by the Minister with the concurrence of the Minister of Finance. Where such ratios are prescribed, a municipality may not levy a rate on non-residential property that exceeds the prescribed ratio. As of 2010 the Minister acting with the concurrence of the Minister of Finance promulgated the Regulations on the Rate Ratios Between Residential and Non-Residential Categories of Property ("the Regulations") **which prescribe ratios between residential properties and agricultural, public service infrastructure (PSI) and public benefit organisation (PBO) properties of 1:0.25 respectively**. The Regulations are binding on all

municipalities and they supersede the provisions of any municipal property rates policy or municipal by-law.

It has been observed that there are municipalities that do not comply with the Regulations, rating one or more of the categories of property that have a prescribed ratio applicable to them at more than 25% of the rate imposed on residential property. There are several observed cases where municipalities depart from the definition(s) of the property categories that have ratios applicable to them. They do this by using definitions that allow for certain of these properties that fall within the regulated property categories to be rated at a different rate to that which is prescribed in the Regulations; thereby subjecting them to a higher cent in the Rand rate than that which is contemplated by the prescribed ratios.

To make the annual determination of cent in the Rand rates more manageable and to avoid such non-compliance it is recommended that municipalities create a simple spreadsheet for the determination of cent in the Rand rates on properties that are subject to the Regulations. Each property category should be entered in the spreadsheet. Formulae should also be entered in the cells that represent the cent in the Rand rate applicable to those categories of property that are subject to the prescribed ratios, these being agricultural, public service infrastructure and public benefit organisation properties. The formula that should be contained in the applicable cells should be:

Cell = c/R(res)*0.25, where c/R(res) is the cent in the Rand rate determined for residential property.

[NOTE: It is important that depending on the spreadsheet software used, that the formulae be entered using the correct formula language and applying the required constraints, as incorrect application is likely to affect the results]

This simple approach will ensure that the cent in the Rand rate for the said property categories is no more than 25% of the cent in the Rand rate determined for residential property thus ensuring that the municipality complies with the Regulations.

(iii) Rates which unreasonably discriminate between categories of non-residential properties

Section 19(1)(c) of the Act prohibits the imposition of “rates which unreasonable discriminate between categories of non-residential properties”. There are few municipalities whose rating practice were found to be non-compliant with section 19(1)(c) in so far as the rating of state owned properties are concerned in that they levy rates tariffs that are high on state owned properties, in certain instances such rates tariffs are even higher than the rates tariffs such municipalities levy on properties used for business and commercial purposes. These municipalities make state owned properties a “cash-cow” and this is impermissible differentiation.

There is no sound or rational basis for making state owned properties a “cash cow” because state owned properties, in particular, those used for “public service purposes” as defined in the Act exist for the sole purpose of ensuring that residents/ citizens receive public services within municipal jurisdictions without the state pursuing the profit objective. When these public services (such as public health, public education, public safety against crime, etc.) are not provided, there is an outcry from the affected communities within the same municipal jurisdictions.

Whilst properties owned by private individuals and institutions for business and commercial purposes exist for pursuing the profit objective (or economic gains), state owned properties used for “public service purposes” are not. It can even be argued that rather than state owned properties used for “public service purposes” being subjected to unsound and irrational rates tariffs, these properties should be subjected to preferential rates tariffs.

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:

The Director: Municipal Property Rating

Postal address: Private Bag X804, Pretoria, 0001

Telephone: 012-334-4933

Facsimile: 012-334-4811

Email: mpra@cogta.gov.za

Website: www.cogta.gov.za