THE NEW

Municipal property rates regulations

MERE REGULATION OR IRRATIONAL RATIOS?

On 19 December 2007 the Minister of Provincial and Local Government published for public comment draft regulations on property rates. The draft regulations set ratios for municipal property rates on different types of properties. A key ratio that stirred much controversy was that the rate on state-owned property should be no more than 25% of the rate on residential property. This has been slammed as unconstitutional and a threat to municipalities' financial sustainability. Moreover, the draft regulations determine that rates on (categories) of properties may not be increased by more than the Consumer Price Index (CPI).

Proposed ratios

In terms of the Municipal Property Rates Act (Act 6 of 2004), the Minister responsible for local government may, with the concurrence of the Minister of Finance, prescribe that a rate on non-residential property may not exceed a certain ratio in relation to residential property. Before issuing the regulations, the Minister must first consult with SALGA on the substance of the regulations and publish them for public comment.

The draft regulations determine a number of ratios:

- The rate on business, commercial, industrial and mining property may not be more than double of that on residential property. For example, if the rate on residential property is 4c in the rand, the rate on business property may not exceed 8c in the rand.
- The rate on agricultural property may not be more than a quarter of the rate on residential property.
- The rate on public benefit organisation property may not be more than a quarter of the rate of residential property.
- The rate on state-owned property and public service infrastructure may not be more than a quarter of the rate of residential property.

Reaction

With respect to state-owned properties, the ratio has provoked loud protests from local government quarters. A meeting of municipal chief financial officers strongly voiced its concern that these regulations would compromise municipalities' financial sustainability. These comments were attributed to SALGA, which responded by publishing a quarter-page advertisement in a major newspaper, saying that, on the contrary, it "has been a key role player in the process leading to the publishing of the draft regulations". It had made inputs to the Department of Provincial and Local Government (DPLG) prior to the publication of the draft regulations, raising the issues that were now being raised in the press.

The position SALGA then took was to say that the matter would be considered by its national executive committee during February 2008, followed by further members' conferences. More forthright was the approach by the municipal manager of eThekwini Metropolitan Municipality, Dr Michael Sutcliffe, who rejected the draft regulations outright, saying they would be challenged on constitutional grounds as well as on the basis of the chaos they would cause.

Constitutionality of the ratios

Could the regulations be challenged in court? I would argue that there are at least two grounds on which they can be challenged.

First, there would appear to be a lack of rationality in including all state-owned property in the ratio, making no distinction between types of state-owned property. In *Guidelines on Rates Act*, issued by the DPLG in 2005, state properties are classified into three categories:

(i) state properties that provide local services such as clinics and local hospitals, police stations and courts;

(ii) state properties that provide regional or district-wide services such as prisons and hospitals; and

(iii) state properties that provide provincial or national services, such as defence and provincial or national departmental offices.

In the latter category, the guidelines suggest, it is reasonable for the government to pay full property rates. In the case of state properties providing local or district services, municipalities are advised to exempt such properties from rating. In the case of public schools, the guidelines suggest that schools should be judged according to the level of economic resources of the community served by a school. This classification does not even take into account the position of the property of parastals. What the guidelines suggest is that there are real distinctions to be drawn between the various types of state-owned properties.

The unreasonableness of this ratio comes strongly to the fore when it is compared with those applicable to business properties and agricultural land. An office block owned by a state department consumes exactly the same level of services as the office block of a business situated next door. If the residential property rate is, say, 4c in the rand, then the business property rate may be up to 8c in the rand. However, the rate on the state-owned office block may not be more than 1c in the rand, namely one-eighth of the rate on the business property next door, for exactly the same services.

The irrationality is further illustrated by the fact that state-owned property is regarded in exactly the same light as agricultural land and public service infrastructure. That rates on these two categories should be much lower than those on residential property is obvious. Properties on agricultural land draw much less in the way of municipal services. The same applies to public service infrastructure, which includes national and provincial roads, railway lines, runways and aprons at national airports – properties which do not require municipal services. What the draft regulations do is to equate the station building with the railway lines and the runways with the airport building, whereas the Property Rates Act carefully draws a distinction.

The second ground of objection is that by imposing a very low maximum on the rate for state-owned properties, the national government may be compromising or impeding a municipality's ability or right to exercise its powers or perform its functions within the meaning of section 151(4) of the

The new regulations appear to lack rationality in including all state-owned property in the ratio, making no distinction between types of property. This is not a case of regulation of rates, permitted by the Constitution, but one of determining outcomes contrary to the Constitution.

Constitution. A municipality is entitled to impose rates as long as it does not unreasonably prejudice national economic policies, economic activities across boundaries or the national mobility of goods, services, capital or labour. None of these goals is served by the proposed ratio for state-owned property. What the regulations do in municipalities that serve substantial state properties is to restrict those municipalities from legitimate and much-needed revenue collection.

Upper limit to rates increases

The Rates Act permits the Minister to determine an upper limit to rates increases. The capping of rate increases to the inflation index presents a similar constitutional problem as it would peg rates to the current levels. This means that a municipality could not use the rates tax base to collect additional revenue for a specific capital expenditure programme or increased services. It is likely to stiffle innovation and initiative at local government level. Although inflation targetting is certainly a national economic policy, the question is whether an increase beyond the inflation rate would be prejudicial to that policy if the increase serves a useful purpose.

Comment

Although it may appear that the Minister is merely regulating the imposition of rates by imposing a ceiling on rates for non-residential property, this is a clear case where, because of the low ceiling set for state-owned property and the fixing of increases as inflationary only, municipalities are given no discretion at all. It is not a case of regulation of rates, as permitted by the Constitution, but one of determining outcomes contrary to the Constitution. The DPLG would be wise to reconsider the draft regulations.

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