MUNICIPAL PROPERTY RATES AMENDMENT BILL

The proposals contained in the Local Government: Municipal Property Rates Amendment Bill (see *LGB* 13(2), July 2011, pp 13–15) have attracted much attention. The media, the public and estate agents have all critiqued the provisions on the rating of residential properties which are not the primary residence of the property owner: for example, investment properties that have been purchased to let, or holiday residences.

Recently a challenge has come from another category of ratepayers too. In *KwaZulu-Natal Agricultural Union v the Minister of Cooperative Governance and Traditional Affairs and Others* (2943/09) [2011] ZAKZPHC 21 (*KwaZulu-Natal Agricultural Union*), the owners of agricultural land sought to limit the powers of municipalities in KwaZulu-Natal to determine the rate applicable to agricultural land.

Both of these developments are important in fostering debate about the provisions of the Bill and clarifying the rating powers of municipalities and how these can be limited.

Defining residential properties in the Bill

The media reported that owners of additional properties feared they might have to pay commercial rates (which are usually much higher than those on residential properties) on residential properties they let out or were not living in, such as holiday homes. In response to the outcry the Deputy Minister of Cooperative Governance and Traditional Affairs, Yunus Carrim, maintained that the proposed amendments only targeted guesthouses, bed-and-breakfast establishments and small hotels for payment of property rates at commercial rates.

However, even with this assurance from the Department of Cooperative Governance and Traditional Affairs, there is a substantial change in the meaning of 'residential property' in terms of the Bill. Unlike the current Act, which vaguely refers to the valuation roll for the meaning of 'residential property', the Bill seeks to exclude from the meaning of 'residential property' all property 'that is used to accommodate persons other than the owner for gain'. The effect of this proposal is that property that may otherwise qualify to be residential property, but is let out or occupied for gain, is not classified as 'residential property'. Therefore while the Bill provides that municipalities may only impose a uniform rate for residential properties, this does not apply to property that is occupied 'for gain', which is subject to a different rate.

What rate is then applicable to such a property that is 'occupied for gain'? What happens in the case of property that is only let out for a certain part of the year, like holiday residences? Is a differential formula for determining rates used? Clearly 'property occupied for gain' does not fall into the category of 'business or commercial property', as defined in the Bill, and will therefore not attract commercial property rates. However, properties let out by homeowners, being excluded from the 'residential property' category, may fall under the Bill's definition of 'multiple purposes' property: '"multiple purposes", in relation to property, means the categories of property referred to in section 8(2)(a) to (g) that are used for more than one purpose, subject to section 9'. Section 8(2)(a) lists 'residential properties' as one of the properties that can have multiple purposes. Section 9 provides the criteria for setting different rates in respect of multiple-purpose properties. 'Multiple purposes' under section 9 includes permitted use (if the permitted use is regulated), a dominant use or multiple purposes, which can be rated differently by a municipality. Thus, a residential property used for gain is, in terms of the proposed new definition of a residential property, and sections 8(2)(a) and 9, a 'multiple purpose' property and property rates may be levied differently.

The deputy minister reminded the public that the objective of the proposed law was to address the challenges faced by the current law and not to target homeowners for additional property rates. He explained, 'Essentially, the Municipal Property Rates Act is being amended to make property rating simpler, more transparent, more uniform and easier

to implement,' and added that if necessary, the proposed Bill could be amended in order to have this objective come out clearly before it was forwarded for debate in Parliament.

Limiting municipal powers to impose rates?

Section 16(2) of the Municipal Property Rates Act 6 of 2004 (Property Rates Act) provides that where a municipality adopts a rate that would

> materially and unreasonably prejudice —
> (a) national economic policies;
> (b) economic activities across its boundaries; or
> (c) the national mobility of goods, services, capital or labour,

the minister responsible for local government may, after conferring with the Minister of Finance, limit the rate that municipalities may impose on a particular category of properties. Section 16(3) makes provision for any sector of the economy, through its organised structures, to request the minister to limit the rate imposed on a particular category of properties. However, such a request may only be made *after* consulting the municipality concerned, as well as organised local government. In this context the minister must be presented with evidence that the rate imposed on a category of properties does in deed cause 'prejudice'.

In *KwaZulu-Natal Agricultural Union* the KwaZulu-Natal Agricultural Union challenged the decision by the minister *not* to cap the rate in the rand applicable to agricultural land in all municipalities across the province. The judgment provided clarity in respect of how section 16 can be invoked. The Court stated that in a system of entrenched cooperative governance and respect for the constitutional integrity of each sphere, the minister's power to interfere by limiting rates was limited and should therefore only be used when he or she was *convinced* that 'a rate on any specific category of properties ... is materially and unreasonably [prejudicial]'. In other words, this power should not be lightly invoked.

Secondly, any application must relate to a rate that has already been adopted by a specific municipality. The Court held, in other words, that the minister 'cannot impose a blanket limitation on every municipality in the province' in that 'it does not make sense to subject every municipality to the same limitation without having regard to the specific circumstances and policy considerations pertaining to each of them'. Lastly, the Court noted that a review of the reasonableness of a rate imposed on a category of properties had to take into account the rebates allowed in terms of the Property Rates Act. Rebates to owners of specific categories of property might ensure that the 'prejudice' caused by a particular rate was minimised or even completely negated. A rebate falling away would arguably be grounds to invoke section 16(3).

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Proposed amendments to section 16

The amendment Bill proposes three changes to section 16 of the Act. The first relates to the fact that when the Minister of Cooperative Governance and Traditional Affairs (COGTA) receives a request to limit the rate in respect of a category of property, he/she would no longer simply notify the Minister of Finance, but would have to act with him or her to give notice in the *Gazette* to the relevant municipality or municipalities that the rate must be limited to an amount in the rand as specified in the notice. This would essentially limit the decision-making power of the Minister of COGTA, who is currently responsible for these decisions. In future decisions would have to be made in concurrence with the Minister of Finance, perhaps ensuring a sound financial investigation of all claims.

The second amendment relates to the bodies which a sector or organisation must consult *before* approaching the Minister. The Bill directs that in addition to the relevant municipality or municipalities and organised local government, the MEC for local government would have to be consulted *before* a request was submitted. The motivation for including the MEC here is presumably to hear the views of the supervising province.

The final amendment places a time limit on organisations intending to contest a particular rate. They would only have 12 months from the date of imposition of the rate to raise their concerns with the minister. In *KwaZulu-Natal Agricultural Union* the Court noted that organisations must bring their 'application as soon as possible'. While 12 months may seem reasonable, the lengthy consultation process with municipalities, organised local government and the MEC before approaching the minister may be time-consuming.

Comment

Municipal property rates can no doubt be used as an effective tool by municipalities to foster development, but, in order to get buy-in from municipalities, communities and all interested stakeholders for the amendments proposed in the Bill, it is important that they be able to contribute to shaping these provisions.