The Property Rates Act

A tool for poverty alleviation

Property rates are an important source of revenue for municipalities and this is reflected in the preamble to the Property Rates Act of 2004 (the Act): “there is a need to provide local government with access to a sufficient and buoyant source of revenue necessary to fulfil its developmental objectives”. At the same time, however, a municipality’s financial health should not be attained at the unjustifiable expense of the poor within its area. The power to impose rates should take into account the imbalances of the past and the burden of rates on the poor.

The Act, while permitting the levying of rates, also requires that the poor are taken into account, provided that such consideration is not arbitrary or haphazard. This much is clear from section 3(6), which prohibits a municipality from granting relief to property owners on an individual basis. Rather, the poor and other vulnerable sectors must be catered for in terms of a rates policy that sets out the criteria for identifiying categories of property owners that may benefit from alleviation measures. The alleviation must thus be granted in a structured and fair manner.

Municipalities are bound by the general principles of administrative law, including the duty to act fairly, when they determine such categories. The general administrative law requirements are further reflected in section 3(3)(a), which obliges the rates policy to “treat persons liable for rates equitably”. Thus, while equal treatment is not required, differential treatment must be equitable. Accordingly, the rates policy may take into account “the effect of rates on the poor and include appropriate measures to alleviate the rates burden”.

Categories of owners and property

The rates policy may differentiate between categories of owners or categories of property. The members of the categories may then benefit through rates exemptions, reductions or rebates. Specific reference is made in section 15 to various beneficiaries, including the indigent, owners dependent on pensions or social grants, owners temporarily without income and owners of residential properties valued below a threshold set by the municipality.

However, other rational differentiations may also form part of the categorisation. An example that looks beyond purely financial thresholds may be where broader economic factors harshly impact on the ability of certain categories of owners to pay rates. An example would be a category of low-income owners in areas largely inhabited by the previously disadvantaged. Such areas may, due to property market trends, suddenly become fashionable and marketable, with the values of properties in those areas surging. This may mean that certain residents cannot afford the proportionate increase in rates. Eventually, when long-standing community members move to more affordable areas and the rich buy their homes, gentrification results.

Municipalities may wish to determine criteria that would identify areas that are transforming through gentrification and establish measures such as discounts that counteract the effects of any potential inequity.

Moreover, a municipality may not levy rates in respect of property that belongs to land reform beneficiaries (or their heirs) for a period of ten years after title is transferred to the beneficiaries. In addition, they may not levy rates on the first R15 000 of the market value of a category of residential property determined by the municipality. These measures will, on the whole, be most beneficial to those belonging to the lower income groupings.

A further measure is the deferment of the payment of rates under 'special circumstances'. The temporary loss of income suffered by property owners in the middle or upper income groups may warrant a deferment rather than a discount as contemplated in section 15. On the other hand, deferment may well undermine the aims of the Rates Act should a municipality defer payments owed by the indigent or temporarily unemployed poor, as it may simply compound the indebtedness of such persons.

Comment

These measures are aimed at alleviating the rates burden on the poor. The exemption, reduction and rebate mechanism will clearly evolve and be pivotal. However, such mechanisms must be prudently conceived and applied.

Municipalities should carefully consider the financial implications of the proposed policies and how best to structure the overall package of exemptions, reductions and rebates. Municipalities must also ensure that their policies comply with the principles in the Act and the general principles of administrative law, in particular whether a policy's differentiation between categories of owners or categories of property is lawful. Thus, the Act seeks to create a framework within which municipalities are able to equitably balance their own revenue needs with those of deserving categories of property owners. Whether that balance will be attained will largely depend on the manner in which municipalities apply the principles outlined in the Act.

key points

- Municipalities must adopt a rates policy that sets out the criteria for identifying the categories of property owners who may benefit from alleviation measures.
- The rates policy may differentiate between categories of owners or of property.
- Municipalities should carefully consider the financial implications of the proposed policies and how best to structure the overall package of exemptions, reductions and rebates.

Achmat Toefy
Director, Public Law Department
Mallinicks Inc.

MALLINICKS