

Legal Briefs

DO PROPERTY RATES EXPIRE AFTER THREE OR AFTER THIRTY YEARS?

The Prescription Act 68 of 1969 provides for a general prescription period of three years. However, debts in respect of “any taxation imposed or levied by or under any law” prescribe only after 30 years. The question is thus: are property rates ‘taxes’ within the meaning of the Prescription Act?

A number of provisions in the Constitution and the Municipal Systems Act suggest that property rates are indeed ‘taxes’. Section 29 of the Constitution provides that a municipality may impose “rates on property and surcharges...and if authorised by national legislation *other* taxes, levies and duties”. Section 118(1) of the Municipal Systems Act prohibits the transfer of property unless payment for “municipal service fees, surcharges on fees, property rates and *other* municipal taxes, levies and duties” have been settled. The same phrase is used in section

HOW ARE DISTRICT REPRESENTATIVES REPLACED?

The Municipal Structures Act prescribes a system for appointing district representatives that results in proportionality; the composition of the district delegation reflects the composition of the local council. The Act also provides that a local council can, by resolution, “replace” a district representative. Since the decision is political in nature, no reasons need to be given. However, the advice is that prior notice must be given to the district representative of the intention to table a motion for replacing a district representative. The term “replace” in the Structures Act does not mean that the local council can appoint

118(3) to give municipalities a preferential claim when a debtor becomes insolvent.

Also, the fact that a municipality can only levy one rate per year suggests that it is a tax rather than a service fee. A service fee can be levied more than once in a year but a tax on property can only be levied once every year. For example, in *Midrand v Strydom* [2000] 4 All SA 123 (A), the Supreme Court of Appeal determined that only one rate per year was permitted. The new Property Rates Act 6 of 2004 does not appear to allow more than one rate. It speaks of the imposition of a rate (singular). Secondly, “additional rates” may only be imposed in special rating areas. Thirdly, the national Minister’s capping of rates increases would be impossible if municipalities could circumvent the cap by imposing additional rates.

The advice is thus that, because they are levied once per year, property rates constitute a tax and prescribe after thirty years.

a new representative by resolution. Such an approach would undermine the proportionality as majority rule would take over. Furthermore, the replacement process is an election; it is managed by the Independent Electoral Commission (IEC), not by the local council. Within seven days of the local municipality’s decision to replace the district representative, the municipal manager of the district council must inform the IEC of the vacancy. The IEC then allows the councillor or party who submitted the candidates’ list (from which the district representative was originally elected) 21 days to amend the list before he or she declares whose name is at the top of the (amended) list; that councillor will fill the vacancy.