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IMFO

Institute of Municipal Finance Officers

Incorporated Association Not For Gain
Reg. No. 1929/001781/08

22 Thistle Road, Kempton Park, 1620
PO Box 4003, Kempton Park, 1620

Tel: +27 11 394 0879
Fax: +27 11 394 0886

Email: ceo@imfo.co.za
Website: www.imfo.co.za

Ms D Nhlengethwa, MP
Chairperson
Portfolio Committee on Cooperative Governance and Traditional Affairs
Parliament

Dear Honourable Chairperson,

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES AMENDMENT BILL (MPRA BILL) – PUBLIC HEARINGS

The Institute of Municipal Finance Officers (IMFO) appreciates the opportunity to submit our comments on the Bill to the Portfolio Committee and the verbal submission on the most important aspects included in this written submission. This input was compiled by the IMFO Valuation and Rating Forum which is attended by a number of municipalities and the attendees are from different professional areas involved with the valuation and rating function.

IMFO wishes to record that the MPRA was a major improvement on the different ordinances that existed prior to its promulgation and that the MPRA Bill contains a number of very good improvements to the Act.

A number of workshops were held with representatives of the National Department over the last few years and good progress was made with a number of the aspects included in the Bill under discussion. However, on a few sections we differ and on those it is our responsibility to draw the practical implications to the attention of the Portfolio Committee.

We are submitting the following comments to further enhance the service levels of Local Government as the current version of the Bill would have a serious financial impact on the financial viability of municipalities.

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Please address all correspondence to: THE CHIEF EXECUTIVE OFFICER

Two General Points:

1. Any amendment to the MPRA should widen the tax base whilst taking into account the ability to pay and the need to provide services to the indigent residents. It should not narrow the base and then expect the remaining base to either pay more or for all the residents to receive a lower level of service. Municipalities are striving to get clean audits from the Auditor-General in 2014 and any negative impact on their sources of finance would compromise this goal.

2. The implementation dates for various sections proposed in the Bill should be consulted with the practioners to ensure compliance to all the aspects impacting on the levying of rates without causing additional administrative expenditure. The IMFO Valuation and Rating Forum is available to provide input to the Department of COGTA when the final amendments are approved by the relevant authorities. It is suggested that the implementation dates be determined via Regulation.

Specific Comments on the Proposed Clauses:

Agricultural Purpose - Section 1 (a):

The purpose of identifying this category of use in the MPRA and the Rates Regulations is to ensure food security for our residents and the lower rate prescribed by the regulations are funded by the other ratepayers. The Act excluded the use for the purpose of trading or hunting of game. These were seen as lucrative business activities that yielded profit whilst not really contributing to food security.

The proposed amendment to this definition of agricultural purpose will provide the substantial rebate to properties where game is reared, traded or hunted. The question is whether it is fair and reasonable to expect the other ratepayers to subsidise these game farms where prices of breeding stock and the selling of the hunting experience provides substantial revenue, prompting farmers to change from livestock to game farming. This will impact severely on smaller municipalities with a large part of their valuation roll comprising farmland which is being converted to game farming.

We submit that the impact of subsidising the lucrative game farming and expecting the remaining ratepayers, many of which are residents just too "rich" to be treated as indigent, to subsidise these business ventures, should not become part of the MPRA.

It is recommended that the inclusion of the rearing, trading and hunting of game as being agricultural activities, be removed from the Bill.

Public Service Infrastructure (PSP) - Section 1 (l):

Whilst the creation of this category of property could be argued as having no impact on municipalities, its residents and its ratepayers, the mere creation and the experience with the Rate Ratios published during December of 2007 are clear indications that a rate ratio is being contemplated.

That draft rate ratio proposed to reduce the rate-in-the-rand for Government properties to 25% of the residential rate-in-the-rand. This was seen as an attempt by Government to reduce its rates bill and to force other ratepayers, including residents, to fund the subsidy that Government is seeking for itself. Following submission by Local Government regarding the severe impact of this rebate on the remaining ratepayers, this category was excluded from the rate ratio published in March 2009.

In terms of the impact, the City of EThekwini will see an increase of 5.47% whilst the City of Cape Town would see an increase of approximately 4.4% on all other ratepayers. This would be in addition to the annual inflation driven rate increases. This increase which would have to be loaded on the ratepayers cannot be defended as adding any value to their services provided by the municipality, in fact this would merely constitute an increase in the total tax load carried by our residents.

The percentage increases for the other municipalities would vary based on the value of their PSP properties in relation to their total rates base, but some are expected to show even higher percentages than the two shown above. It is therefore submitted that this is a real threat to the financial viability and stability of local Government.

An additional impact on the financial viability of municipalities will be the moving of these amounts from a property owner with the ability to pay all the invoices on time (a 100% payment rate) to other ratepayers where the payment ration varies from 90% to 97% depending on the individual municipality's average annual collection rate. This effect will reduce the municipality's cash flow and be a negative impact on their level of service delivery.

Service delivery at the local level is curtailed by the availability of funds to perform those services and when the funding is reduced the impact will be felt by the resident.

The purpose of the MPRA and therefore the Bill is to ensure that municipalities have a stable and predictable source of revenue to perform the functions allocated to Local Government via the Constitution. This purpose should not be diluted by restricting the municipalities from raising rates from those with the ability to pay and thereby forcing it to either reduce the standards of its service levels or increase the rates on other residents.

We submit that it is an accepted practice to increase rates in order to fund assistance to indigent residents as this is defendable on a moral, humanitarian and cost-effective basis. However, subsidising a property owner with the demonstrated ability to pay is not defendable.

Government deals with normal land transactions at market related prices whilst goods and services are procured at normal selling or tender prices without any prescribed rebate or subsidy. However, for the rates which forms but a fraction of the operating costs of the PSP properties, all indications are that Government is busy preparing the

way for granting itself a subsidy. From a moral and financial perspective this seems inequitable.

Municipalities are already assisting Government by the performance of unfunded and underfunded mandates where rate income is used to provide and fund services that are allocated to National and Provincial Government in terms of our Constitution. Adding a further direct subsidy to Government in the form of a rates rebate would exacerbate the situation.

There is a risk that this definition and the imposition of a rate ratio could be seen as the abuse of legislative power by a ratepayer to the detriment of all other ratepayers.

It is therefore submitted that the definition of Public Service Purposes should be removed from the Bill in order to avoid this serious risk to the financial viability of municipal service delivery.

Residential Property Definition - Section 1(n):

The definition of residential property is a fundamental aspect of a rates policy and it is submitted that this should be left in the hands of the municipality to determine for their area. The Bill will make it difficult to administer as businesses such as guesthouses, blocks of flats etc., would all be classed as residential, but a number of municipalities cannot afford to classify them as residential as that would reduce their rate income from owners with the ability to pay.

It is recommended that this definition remain as it is in the Act.

Differential Rates - Section 8:

The socioeconomic situation in each municipality is unique and although the rates policies and tariffs would deal with the same challenges, one municipality cannot adopt that from another verbatim but must review and amend it to meet the service level demands of its own residents, the service standards, ability to pay and development potential.

Taking away the municipality's right to determine the categories of properties in their own rates policies removes their responsibility to review this aspect of their policies as part of the annual budget process. Whereas policies are reviewed on an annual basis, amending legislation is a far more complex and time consuming exercise.

Determining those categories in national legislation removes the accountability of Councillors for this aspect of their policies and complaints by residents in this regard will have to be directed to the Minister and not the Councillor.

This proposed amendment to the MPRA should also be viewed in the light of the Constitution right granted to municipalities to govern the local government affairs of its community. Removing the right to determine these categories from municipalities and keeping in mind the rate regulations and that expected following the enactment of

this Bill could be seen as an impediment the municipality's right, responsibility and accountability to manage its affairs.

We reiterate that the imposition of a ratio that would lower the revenue collected from ratepayers with the ability to pay would be detrimental to the drive to improve service levels to all the residents, to achieve clean audits in 2014 and to maintain such clean audits in subsequent years.

A further aspect that should be kept in mind is that the relief granted via the categories and the rate ratio is that the rebate which is an expenditure item in our budgets, is "spent" on funding an unfunded mandate. This will increase the drain on rate funds away from the competencies and powers of the municipality and increasing the spending on unfunded or underfunded activities where other spheres of Government should foot the bill.

It is recommended that the word "may" as recorded in sections 8 (1) and (2) and the Act be retained and that the word "must" in these two sections of the Bill be replaced by the word "may". This will allow the municipality to retain the right to determine the categories in their rates policy and to remain accountable to their ratepayers.

It is also a concern that per section 8(2)(j) of the Bill, the Minister may determine other categories without Parliamentary oversight. This comment is not intended as slight to the Honourable Minister, but to show the lack of oversight.

Constitutionally Impermissible Rates – Section 16(3)(aA):

The Bill includes a timeframe which is an improvement on the Act, but the 24 months is problematic and would create pressure on the Minister to make a ruling which the municipality would not be able to implement. The request to the minister should be filed within 6 months after the tariff was approved by the municipal council to allow the Minister to apply his mind and make a ruling within the year of operation. To amend a rate in the year of operation is a challenge unless the impact is relatively small or the adjustments budget show savings to fund the effect of the ruling. Importantly, this ruling would then be able to be taken into account for the compilation of the next year's budget and tariffs.

The current 24 months in the Bill could lead to the ruling being received would be after the auditing of the financial statements of the year under discussion and even the next financial year. Even the Courts are not prepared to grant judgements that would put a municipality in disarray when tariff reviews are requested which municipalities cannot implement as those years have been audited.

Cities start their budget processes in November of the previous years and they must be informed of such a ruling by February at the latest, to ensure that they take this into account for the new budget.

It is recommended that this timeframe be restricted to not more than 6 months and that the 24 months in the Bill be replaced by 6 months.

Compulsory review of decisions of municipal valuer – Section 52:

Although Section 52 is not included in the Bill, we wish to draw the Portfolio Committee's attention to the impact of this section on the municipality and its budgeting processes.

Section 52 of the Act requires that the municipal valuer must provide written reasons for every decision where the property value was adjusted by 10% or more and that the Appeal Board must review all decisions where the change is more than 10%.

Each objection received will be considered by the municipal valuer and a decision made on the question of value. The logic of the compulsory review is not understood as it makes the pronouncement by the valuer meaningless.

It is quite obvious in processing the objections received that the majority will require an adjustment upwards or downwards in excess of 10%. Generally speaking, objections are not raised by owners and affected parties if the requested revised figure lies within 10% of the value on the roll. The implication is that the appeal boards will have to review the majority of the objection decisions. This extra quality control measure will increase the time needed by the appeal board to deal with all the cases where appeals are lodged and will also increase the costs without adding real value to either the municipality or the objector.

Historically the appeal board's role is to arbitrate valuation disputes and not to act as a quality controller. Interference by the appeal board in the decisions of the municipal valuer prior to an opportunity to appeal effectively makes the objection process trivial.

Arguments to the effect that the valuer cannot be a judge of his own work are also trite. The objection process forces the valuer to apply his mind to issues raised by the objector. If the valuer's decision results in dissatisfaction, an appeal can be raised.

Every objector (and affected party) has the right to appeal the decision. This provides ample recourse. Quality control on the valuation roll is a function of the municipality as this is affecting their major source of income; they will guard against under valuations whilst the owners would guard against overvaluations.

Expecting the Valuation Appeal Boards (VAB) to review all the resolved objections where the adjustment is more than 10% increases the workload of the VAB and the costs whilst it is not serving as a quality review as the selection of this sample for them to review, is not scientifically sound and cannot result in an opinion on the roll - they only review the properties in front of them. In addition to the costs so incurred without really adding value, the time delay for the VAB to complete the appeals

against the values determined by the valuer when resolving the objections, is the real crux of the matter.

Municipalities must project their rates income based on the valuation roll applicable for the budget year and whilst appeals are still outstanding, there is no real certainty on the valuation roll. It is therefore imperative that the time delays between the implementation of the value on the roll via a General Valuation or a Supplemental Valuation and the finalising of the appeal by the VAB be as short as possible. Delays caused in this aspect create difficulties when the budgets are compiled.

We recommend that section 52 be deleted.

Supplementary valuations – section 78:

This improvement is supported, but this will necessitate a review of the Regulations to bring the Regulations in line with the Bill.

The review as contemplated in section 78 (4) of the Bill requires the process to be followed to be clarified. We suggest that it be similar to that currently applicable to Supplemental Valuations.

Reporting to the Minister by municipalities – Section 82A:

This information is the same as supplied to the Minister of Finance with the annual budget and the purpose of this duplication is not understood. If both Ministers submit comments or guidance to a municipality, which Minister's actions would be carried? It is submitted that with the impact on the municipal budget, the actions of the Minister of Finance should prevail, making this submission not really add value.

We submit that this paragraph be deleted.

Offences – Section 86:

Although not included in the Bill, a paragraph should be included to ensure penalties for noncompliance with sections 28 and 29 of this Act. These two sections deal with the attachment of rentals in cases where the owners fail or refuse to pay their rates accounts.

We recommend the following: (aA) fails to comply with a written notice issued by the municipality in terms of section 28(1) or section 29(1);

Recovery of rates in arrears from tenants and occupiers – section 28:

Some difficulties are being experienced by persons paying their rental to third parties or to any lessor who is not the owner of the property and these rates cannot be collected. It is suggested that this unintended loophole be blocked adding at the end of the last sentence in section 28(2) the following words; ", to any third party or to any lessor if such third party or lessor is not the registered owner of the property."

Transitional arrangements relating to determination of municipal boundaries: Existing rates policies – Section 90:

The Bill refers to the financial year in which the property is included in a new municipal area, but in order to ensure prudent financial management and the inclusion in the annual review of all budget related policies, this timeframe should be extended to also include at least the following financial year. Should this not be done, we will have properties being non-rateable in the subsequent financial year (depending on the date when the inclusion takes place).

In section 90(a) the rating policy is carried forward with the properties included in a new municipal area, however the Rates By-law must also carried forward to ensure that the rates policy can be enforced.

Thank you for this opportunity, as well as the presentation opportunity, to comment on the Bill. Please do not hesitate to contact the writer of this submission should any further clarity be required. Mr George van Schalkwyk can be reached on 021 400 1985.

Yours sincerely

Mr G van Schalkwyk
Chairperson of the IMFO Valuation and Rating Forum