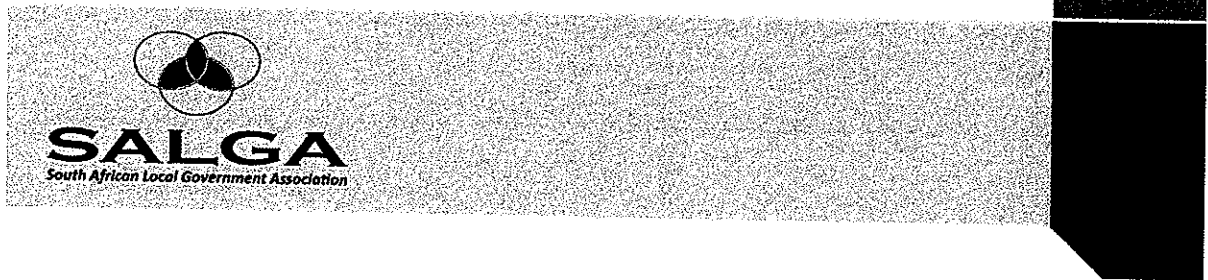


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SALGA SUBMISSION TO THE PORTFOLIO COMMITTEE OF COGTA ON THE LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES AMENDMENT BILL

1. INTRODUCTION

At the outset we must acknowledge that the development of the Bill has come a long way, and that SALGA and the Department had a number of technical discussions in addition to the formal consultation at MinMEC and other fora.

The Bill in its current form is supported in principle, with the exception of a limited number of concerns for municipalities that will be set out below. It must be stated that a number of concerns raised by SALGA on previous versions of the Bill have been addressed by the Department in the process of finalising the draft. The comments rendered herewith only addresses matters that local government regards as critical to be addressed to ensure sound financial management and budgeting in municipalities as well as financial stability.

We also wish to appreciate the insertion of section 89A and the amendment of section 90 as it address matters critical in the restructuring of municipalities as a result of the redetermination of municipal boundaries.

2. GENERAL

The Constitution of the Republic of South Africa, 1996, provides that the objects of local government include the obligation to ensure the provision of services to communities in a sustainable manner. Section 153 provides that the municipality must structure and manage its administration and budgeting processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.

The Local Government Turn-Around strategy, adopted by Cabinet in 2009, was very clear that a "one size fits all" approach was not suitable for local government and that a differentiated approach was required with regard to municipalities, due to the varying nature of municipalities.

The purpose of the Local Government: Municipal Property Rates Act , 2004 (hereafter the MPRA) is, inter alia, "to regulate the power of municipalities to impose rates on property; to make provision for municipalities to implement a transparent and fair system of exemptions, reductions and rebates

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through their rating policies. The intention is thus to regulate the said functions, as oppose the inhibiting same.

In so regulating, the objectives of the Constitution, in particular the requirement for municipalities to provide services in a sustainable manner needs to be complied with, as well as the principle of differentiation, in order for each municipality to address its unique circumstances but at the same time addressing the social and economic development of the municipality.

Although SALGA in the main supports the Bill, there are a few aspects of concern that need to be brought to the attention of the committee, as it will affect both the financial sustainability as well as the socio-economic situation of the community.

3. SPECIFIC COMMENTS

The specific comments on the Bill are set out below.

Definitions:

Agricultural property

Although the content of the new definition is supported, it is proposed that the phrase should remain agricultural purpose as opposed to agricultural property. Although section 8 ids now being amended to refer to agricultural properties, it is recommended that section 8 as well as the definition clause should refer to agricultural purposes in order to be aligned to section 8(1) which allows a municipality to determine categories in accordance with the use or permitted use of the property. The focus is, therefore, on the use of the property and not as such the nature thereof .

Additional proposal:

Property

The definition of *property* currently includes the following:

A land tenure right registered in the name of a person or granted to a person in terms of legislation.

Although the amendment to the definition of a land tenure right is supported as is now creates more legal certainty, the implementation thereof does pose challenges to municipalities that have land under the control of tradition authorities in their municipalities. This is caused by the definition of land tenure right which, in terms of the Upgrading of Land Tenure Rights Act, 1992, is defined as follows:

“land tenure right” means any leasehold, deed of grant, quitrent or any other right to the occupation of land created by or under any law and, in relation to tribal land, includes any right to the occupation of such land under the indigenous law or customs of the tribe in question;

The right to occupation under indigenous law or customs is the authority of the traditional authority and the municipality is neither part of the process to grant such right to occupy nor informed of any such rights granted. The municipality is thus in the normal cause of events not aware if the existence

of these rights and per definition the relevant category of properties as per the definition of property.

Where the registered owner is held responsible for rates on the land, the municipality is referred to the definition of the word owner as contained in the MPRA in terms whereof the beneficiary of the right is deemed to be the owner and therefore the registered owner refuses to pay the relevant rates on the land where such is rateable. There are no formal land asset or land right registers in this regard, resulting in the municipality having to spend a huge amount of human and financial resources to determine the person liable for rates and taxes.

As these areas normally fall in less capacitated and non-viable rural municipalities, their ability to generate own income is impaired.

It is thus proposed that only registered right be included in the definition of property, as this will allow the municipality to determine the owner of the property as per the definition of owner as contained in the Bill.

Section 4 of the Bill

The section provides for the amendment of section 6 of the MPRA to refer to the fact that a by-law must be adopted in terms of sect 13 of the Municipal Systems Act. Section 13 of the said act, however, deals with the publication of by-laws once adopted in terms of section 12. It would, therefore, be preferable to refer to both section 12 and 13 of the Municipal Systems Act.

Section 6 of the Bill

The section provides for the amendment of section 8 of the MPRA. Section 8(2) now prescribes that certain categories of rateable properties must be determined. The municipality thus does not longer have the discretion to determine categories of rateable properties in its municipal area through its rates policy and rates by-laws. The prescription of a fixed set of categories will not allow a municipality to address very specific dynamics it that municipality in order to ensure financial stability and the provision of sustainable services. This uniform approach to different types and categories of municipalities is contrary to the differentiated approach for municipalities introduced by the Local Government Turn Around Strategy and implemented through Outcome 9.

SALGA is of the view that the current version of the MPRA is preferable, as it allows a municipality the discretion to address its particular local conditions. The prescriptive categories will impair the ability of municipalities to maximise its rates income.

In addition to the aforesaid, and as alluded to under the definition of agricultural property, section 8(1) of the MPRA determines that the categories of rateable properties must be determined according to the use of the property, the permitted use of the property or a combination of the two. It is thus the use of the property that determines its categorisation and not the nature of the property per se. The opinion is therefore held that the categories should be defined according to the use, as is the case in subsection (2)(f), (h) and (i). The reference to property in the other sub-sections and therefore the definitions, should be aligned to this and refer to uses.

The re-categorisation of properties and the practical implementation thereof will also have a financial impact on the municipality as it will not only require an amendment of the rates policy and require the amendments of the rates by-laws but it will also require either the preparation of a new general valuation roll and the preparation of a substantial supplementary valuation roll in order to reflect the categories as prescribed.

The amendment is thus **not supported**.

Section 12 of the Bill

The section amends section 16(2) by inserting a section that provides that permission for a preferential rate may be applied for within 24 months from date of imposition of the rate. The effect of this is that the retrospective approval of a preferential rate will affect up to three financial years of a municipality. The effect hereof will be that the rates levied and reflected in the annual financial statements of a municipality as audited by the Auditor-General and included in the annual report of the municipality in terms of the Local Government: Municipal Finance Management Act, 2003, will be amended two years after the fact. This may not only require a municipality to possibly refund rates collected subsequent to it having been reflected as accrued income, but can also have a major impact on the current year budget, as an adjustment budget might be required which will need to address such an expense.

It is therefore proposed that the 24 months be limited to six months, alternatively the Bill must clearly specify that any such preferential rate will only take effect from the next financial year of the municipality, in order for the municipal budget to be able to accommodate such a preferential rate.

Section 13 of the Bill

Section 13 of the Bill amends section 17 of the MPRA by introducing the prohibition of the levying of rates on certain categories of public service infrastructure. The amendment will have a direct impact on the financial position of municipalities. Metropolitan municipalities have indicated that the remainder of its rates would require an increase of 4,1 – 5% to maintain the current rates income. A large portion of the increase, will due to the ratios prescribed, be recovered from residential properties. In the Nelson Mandela Bay Metropolitan Municipality, an income of R20 million will be forgone for collections on prisons only. In addition, 65% of residential properties that are subject to rates, are valued under R750 000. This will mean that the brunt of the impact in this metro will be felt by residents that can be classified as middle income earners and will thus also have a serious socio-economic impact on the municipality.

The department should indicate what measures would be taken to mitigate the impact of the proposed amendment on municipalities and communities.

Section 30 of the Bill

The section provides for the reporting requirements of municipalities, to both the National and Provincial Executive Authority. Although SALGA recognises that National and Provincial Government has an oversight function over municipalities, this oversight function should be exercised with circumspect. Outcome 9 stated very clearly that the reporting requirements of local government had

to be reconsidered and expressly stated that the reporting requirements had to be decreased by 50%. The information required in terms of the proposed sect 82A to a great extent is already included in current reporting requirements and only information not already reported on, such as the evidence of the submission of the valuation roll to the municipal manager should be provided for. The reporting requirement thus needs to be reconsidered.

Section 36 of the Bill

The comments on this section should be read with the comments provided under section 13 of the Bill, Due to the huge impact of section 13 of the Bill on municipalities, it is proposed that the transitional arrangement allow for the phasing in of the non-levying of rates over a five year period as opposed to a three year period.

4. CONCLUSION

The Bill in its current form is supported in principle, with the exception of the few areas of concern for municipalities highlighted above. These relate in particular to issues that we believe could negatively affect both the financial sustainability as well as socio-economic context of the affected communities.

We trust that the Committee will consider our comments favourably in the finalisation of the Bill. Through our interaction and representation of our membership, SALGA will continue to engage the national legislative process to ensure the institutional integrity of local government on the one hand and the efficacy of legislative interventions aimed at improving service delivery on the other.