28 January 2014

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SUBMISSION TO THE PORTFOLIO COMMITTEE ON LOCAL GOVERMENT:

Local Government: Municipal Property Rates Amendment Bill [B33-2013]

Date: Wednesday, 29 January 2014

Time: 10:30-11:15

Johan Pienaar: Deputy Executive Director: Agri SA

Agri SA welcomes the bill especially from the perspective that it's aimed at minimising legal and policy misinterpretations that have arisen since the inception of the Act. Although the farming community was exposed to regional services council levies nationally and divisional council levies in the Cape Province, property rates was basically a new addition to the tax system in rural areas. This lead to some confusion as it was perceived to be a levy for services to be rendered to the farming community by municipalities despite the constitution clearly stating that property rates in a sense is a general tax. Further confusion arose as it was not clear how section 229(2) dealing with economic policy matters was to be interpreted and what criteria will be applied in this regard.

According to clause 12 dealing with constitutionally impermissible rates, section 16 of the Act will not be altered accept to propose that the Minister of Finance should be consulted and not only notified as stated currently in the Act. We appreciate the fact that adding or devising criteria in the regard will be extremely difficult, it is nevertheless necessary to add content to the Constitution.

We do welcome the change to the definition of agricultural property, which did lead to confusion especially on farms where livestock and game farming take place jointly on the same farm.

Clause 1 – Amendment of section 1

Under the definition of 'agricultural property', the words 'or for trading on or hunting game" have been removed, and the words "including the rearing, trading, and hunting of game..." have been inserted. This is to be welcomed as game farmers were previously discriminated against in that they were excluded from the definition and therefore treated differently from their neighbours that farmed with livestock. Areas used for ecotourism is however still excluded. It seems clear therefore that hunting operations or game farms used to rear and sell game are regarded as agricultural property. It does however beg the question of where ecotourism ventures will be classified. Private farms used for ecotourism ventures will not qualify as an exempted protected area in terms of section 17 unless it has been declared a nature reserve or a special nature reserve by the Minister or MEC in terms of the National Environmental Management: Protected Areas Act (Act 57 of 2003), nor is it a designated category in terms of section 8.

Whilst Agri SA welcomes the inclusion of rearing, trading and hunting of game in the definition of agricultural property, we feel it is unjust that ecotourism ventures and any portion of the property used for the hospitality of guests is excluded from receiving a rebate.

Unlike similar facilities in towns and cities, basic services required by these ecotourism ventures or portions used for housing guests are provided by owners of the agricultural properties, not municipalities. As such the owners of these properties should not be burdened with paying the same municipal rates as ventures that receive a full array of services from the local municipality.

Agri SA welcomes the proposed definition of the "ratio" as it now clarifies the position of rebates of a general application to all properties within a property category.

Clause 3 (c) – repeal of clauses 3 (4) (a) & (b)

By deleting the subsections, a municipality may no longer consider the extent of services provided by the municipality or the contribution of Agriculture to the local economy when considering the criteria to be applied in allowing exemptions, rebates and reductions for properties used for agricultural purposes. The Municipality must now focus their attention only on the extent to which agriculture assists in meeting the service delivery and development obligations of the municipality and the contribution of agriculture to the social and economic welfare of farm workers. Agri SA objects to the repeal of especially 3(4) b (i.e. contribution of agriculture to the local economy). We believe the extent of services provided by a municipality to farms as well as the contribution of agriculture to the local economy is relevant in deciding on exemptions and rebates. If this dispensation is intended to substantiate rebates and exemptions in relation to property in addition to general rebates it however seems acceptable.

Clause 6 – the substitution of section 8

Under section 8 (1), subsection (c) has been replaced “a combination of (a) and (b)”. This means that geographic location is no longer a listed ground according to which properties should be categorised and consequently taxed at a different rate. It seems as if the amendment Bill is moving away from geographic location as a means to differentiate between properties and moving more towards a focus on the activity that takes place on the property to differentiate.

With regards to subsection 2, a municipality no longer has discretion whether or not to categorise different types of property within the municipal jurisdiction. Whereas the Act previously stated that “categories of rateable property that *may* be determined”, it now states that “A municipality *must* determine the following categories...” This is to be welcomed as it will bring more legal certainty. Interestingly, the list previously included communal land as a category where the new Bill makes no reference to this. Does the holder of a land tenure right within a communal area qualify as a land reform beneficiary? If this is the case he/she would be exempted from paying rates by virtue of section 17.

In order to be comprehensive, the old list included state land and municipal land with no qualifications as to their use. The new Bill makes reference to “properties owned by an organ of state and used for public service purposes” which qualifies the designation as the land has to be owned by an organ of state *and* be used for a public service purpose. In addition, the definition of public service is a closed list and does not make provision for any activities such as reserving the land to provide for alternative accommodation to evicted persons etc. Considering that it is mandatory to classify all properties into one of the listed groups, one has to question what the status will be of state land that is not used for a purpose designated under this section. It is also not certain how rented property to farm workers will be categorised and taxed.

Clause 11 – amendment of section 15

The new clause 2A states that a municipality may grant a rebate or discount based on a fixed ratio on, amongst other categories of land, properties to which a land tenure right applies and on which no commercial agricultural activities are conducted; and”

The term ‘commercial agriculture’ is not defined in the amendment Bill and could cause some confusion. Agri SA would recommend that a definition for ‘commercial agriculture’ be inserted.

In the glossary of the United Nations Food and Agricultural Organisation (FAO), commercial farmers are defined as “*farmers that produce agricultural products intended for the market to be delivered, sold or stored at commercial structures and/or sold to end consumers (feedlots, poultry farms, dairies etc), fellow farmers and direct exports. They generally use high levels of inputs.”* An adaptation of this definition could be used to define commercial agriculture.

Clause 13 – Amendment of section 17

Regarding the amendment to section 17 (1) (g), it should be clarified whether or not a land reform beneficiary in this context includes the holder of a ‘land tenure right’ as defined in section 1. It needs to be noted that the Department of Rural Development and

Land Reform often does not transfer the title of land to land reform beneficiaries, but hands the land over to them whilst the title remains with the state. Will property rates be levied on such state land and if so, who is to be liable for paying the rates?

Clause 28 – Amendment of section 80

The insertion of the words “by a municipality” effectively removes an MEC’s competence to condone non-compliance with any time period specified by the Act as far as it relates to a private person. Before the amendment, the MEC was, on good cause shown, able to condone any conduct required by this Act where a municipality or a private person has a good reason why they could not comply with the time frames. After the amendment, the MEC can only condone non-compliance with a time limit by the Municipality, and not by a private person irrespective of whether or not there was a good reason for it. This amendment is unfair towards private persons and bias towards non-performing municipalities. The fact that only municipalities and no private persons can seek condonation for non-compliance with the time limits could fall foul of the right to just administrative action enshrined in section 33 of the Constitution. In addition, it also undermines the principle of state accountability, derivative of the rule of law principle protected by section 1 of the Constitution.

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