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cooperative governance
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BRIEFING THE SELECT COMMITTEE ON COGTA ON CRITICAL PROVISIONS OF THE MUNICIPAL PROPERTY RATES AMENDMENT BILL EFFECTED BY THE PORTFOLIO COMMITTEE ON COGTA

Following the public hearings held in January 2014 as well as deliberations with the Portfolio Committee on Cogta on the merits of the public submissions and how these could be accommodated in the Bill, the following revisions were effected to the Bill by the Portfolio Committee:

(i) The inclusion of game farming ("the trading in and hunting of game") in the definition of "agricultural property"

It was the view of the Committee that it was inappropriate that the definition of agricultural property includes the trading in and hunting of game because the activity does not contribute to food security and it cannot be classified as farming. Those aspects of game which constitute food production are also regarded as constituting "luxury food".

There is also fear that the inclusion of game farming in the definition of agricultural property may incentivise conventional farmers to convert their land to game farming. If it was included in the definition of agricultural property, game farming would automatically have enjoyed the same preferential rating currently limited to conventional farming in terms of regulations on rates ratios - in which property used for agricultural purposes enjoys 75% discount of rates compared to properties used for residential purposes.

(ii) **Section 8 which deals with a framework for property categorization (that is, whether a property is classified as residential, commercial and business, industrial, agriculture, etc for rating purposes)** was revised to allow for municipalities to, if they can show good cause apply to the Minister with motivations to sub-categorise the main property categories (as reflected above in terms of section 8(2). This compromise was reached to address concerns that section 8 may be overly prescriptive, concerns that were raised by municipalities in the public hearings. A new clause was added to section 8 - clause 8(4) - which reads as follows:

"(4)(a) *Where a municipality can, on good cause, show that there is a need to sub-categorise the property categories listed in subsection (2), a municipality*

must apply to the Minister in writing for authorisation to create one or more of such sub-categories.
(b) Such application must—
(i) be accompanied by a motivation for such sub-categorisation;
(ii) demonstrate that such sub-categorisation is not in contravention of section 19; and
(iii) reach the Minister at least 15 months before the start of the municipal financial year in which the municipality envisages levying a rate on such sub-categorised property."

In addition **transitional arrangements** were added to provide that municipalities must implement the provisions of section 8 within 7 years of the effective date of this Act, giving municipalities sufficient time to adjust to the new property categorization framework.

(iii) In respect of the **amendments proposed to section 16 which provide for the Minister to protect sectors of the economy if municipalities subject them to excessive rating**, amendments that purported to provide for a timeframe within which sectors of the economy should make submissions to the Minister in terms of section 16, were withdrawn and replaced with an amendment to provide for a notice issued by the Minister limiting the cent in the Rand rate to be levied on any specific category of properties in terms of section 16, to determine the date from which such a rate is effective. These revisions were made because submissions emanating from public hearings indicated that there was an interpretation amongst stakeholders that it is possible for the Minister's action in terms of dealing with punitive rates that may have been imposed by municipalities to result in the redress being made to be retrospective in terms of effective date thereof, meaning that municipalities would have to repay property owners rates that were deemed to be unconstitutional or illegal in terms of section 16. It was agreed in the Portfolio Committee that this revision would clarify that no rate imposed by the Minister in terms of section 16 would have retrospective effect. The revisions that were inserted read as follows:

"16(2)(b) A municipality affected by a notice referred to in paragraph (a) must give effect to the notice ***[and, if necessary, adjust its budget for the next financial year accordingly]*** *<u>,the effective date of which must be from the date determined by the Minister in the notice</u>."*

(iv) In light of the amendments that were effected to clarify matters related to **places of public worship and the official residences related thereto**, it was agreed in Committee that section 17(1)(i) be amended to make it clear that only one office bearer's official residence registered in the name of the relevant religious community is excluded from municipal rating. Section 17(1)(i) was amended to read as follows *"A municipality may not levy a rate -*

"(i) on a property registered in the name of and used primarily as a place of public worship by a religious community, including [an] <u>the</u> official residence

registered in the name of that community which is occupied by [an] <u>the</u> office bearer of that community who officiates at services at that place of worship."

(v) The Bill as submitted to Parliament contained **amendments to section 32 to extend the period of validity of a valuation roll** to five years and for the MEC to extend such period of validity by an additional two years to seven years upon application by a municipality under exceptional circumstances or if a section 139 intervention was in effect in a municipality. Public submissions and deliberations in the Portfolio Committee pointed to the need to recognise the different capacities of municipalities in determining the period of validity of the valuation roll.

To that end the amendments to section 32 were revised in the Portfolio Committee to introduce the concept of differentiation between metropolitan and local municipalities in terms of the validity of valuation rolls. The validity of the valuation rolls of metropolitan municipalities is retained at 4 years whilst that of local municipalities is extended by one year to 5 years. In addition the MEC responsible for local government is allowed to extend the validity of valuation rolls by one additional year in the case of exceptional circumstances on application by a municipality. In the case of a provincial intervention, the validity of a valuation roll may be extended from 4 to 6 years in the case of metropolitan municipalities and 5 to 7 in the case of local municipalities.

(vi) **Proposed amendments to include as member of the valuation appeal board a professional associated valuer without restrictions and with ten years experience in the valuation of property** were revised slightly in the Portfolio Committee to provide that a professional associated valuer without restrictions and with ten years experience in the valuation of property may be appointed if a professional valuer could not be appointed. The revised clause amending section 58(1)(b) now reads as follows:

"(b) An appeal board consists of not fewer than two and not more than four other members with sufficient knowledge of or experience in the valuation of property, of which at least one —
(i) must be a professional valuer registered in terms of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000); or
(ii) <u>may be a professional associated valuer, without restrictions and with at least ten years experience, registered in terms of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), if a professional valuer cannot be appointed</u>."

The effect of the above amendment is that preference has to be for the appointment of a professional valuer. However, taking into account *"the need for representivity, including gender representivity"* it may not always be possible for a professional valuer to be appointed.

(vii) Based on a request from municipalities, **the transitional provisions to phase out the levying of rates on certain public service infrastructure such as roads,**

railways, airport aprons and runways, dams and breakwaters were revised in the Portfolio Committee to be effective for five years instead of the original three years. Therefore municipalities will have five years within which to phase out the rating of these kinds of public service infrastructure.

All other revisions that were made in the Portfolio Committee were technical in nature.

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