cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT:

MUNICIPAL PROPERTY RATES ACT NO.6 OF 2004

GENERAL GUIDELINES

(March 2020)

TABLE OF CONTENTS

Page

SECTION A: GENERAL BASIC INFORMATION ON PROPERTY RATES 2

SECTION B: RATES POLICIES 9

SECTION C: IMPERMISSIBLE RATES 20

SECTION D: LEVYING OF PROPERTY RATES ON SECTIONAL TITLE SCHEMES, TIME SHARING INTEREST AND SHARE BLOCK COMPANY 30

SECTION E: LIABILITY FOR RATES FOR AGRICULTURAL PROPERTY OWNED BY MORE THAT ONE OWNER IN UNDIVIDED SHARES PRIOR TO THE COMMENCEMENT OF THE SUBDIVISION OF AGRICULTURAL LAND ACT, 1970. 32

SECTION F: DEFERRAL OF PAYMENT ON RATES LIABILITIES: SECTION 26(3) OF THE ACT 34

SECTION G: RECOVERY OF RATES FROM TENANTS, OCCUPIERS AND AGENTS 35

SECTION H: PUBLIC NOTICE OF VALUATION ROLLS AND ASSISTANCE TO OBJECTORS 37

NOTES 38

SECTION A: GENERAL BASIC INFORMATION ON PROPERTY RATES

What are municipal property rates?

Municipal property rates are a cent amount in the Rand rate levied on the market value of property. The Constitution of the Republic of South Africa gives municipalities the power to value and rate property in their area of jurisdiction.

Who is liable for the payment of property rates?

All owners of rateable property are liable for the payment of rates.

How are property rates determined?

Municipal Property rates are calculated by multiplying the market value of property by a Cent amount in the Rand rate that a municipal council has determined. For example:

> If the market value of property is R 50 000, and the cent amount in the Rand rate is R0.015 (which is 1.5 Cent), the amount due for property rates is R50 000 x 0.015 = R750 for the whole year, which means that every month the property owner will pay R62.50 (this is calculated by dividing R750 by 12 as the year has 12 months) to the municipality.

If the property in question is used for residential purpose (home):

- The cent amount in the Rand rate will be applied after deducting the first R15 000 of the market value of such residential property (this is a minimum requirement of the Municipal Property Rates Act), which means that the R0.015 will be applied to R35 000 rather than R50 000 (that is, R50 000 less R15 000); and
- The rates payable by the homeowner will then be = R35 000 x 0.015 = R525 for the whole year, which means that every month the property owner will pay R43.75 to the municipality.

The cent amount in the Rand rate is decided by the municipal council taking into account public comments/submissions/inputs on the municipal council's draft rates policy and budget that is

subjected to the process of community participation in line with chapter 4 of the Municipal Systems Act and Municipal Finance Management Act as well as section 4 of the Municipal Property Rates Act.

How is the market value of the property determined?

The market value of the property is the amount the property would have realised if sold on the date of valuation in the open market by a willing seller to a willing buyer. The market value of the property must be determined by a professional valuer or professional associated valuer who must be a person, who is registered in terms of the Property Valuers Profession Act 2000 (Act No 47 of 2000). All municipalities throughout the country have to comply with section 39 of the Municipal Property Rates Act in employing or contracting valuers to conduct municipal valuations for purposes of rating.

In determining the market value of property certain aspects are disregarded for the purposes of valuing the property. These include:

- The value of any annual crops or growing timber on the property that have not yet been harvested as at the date of valuation;
- The value of any building or other immovable structure under the surface of the property, which is the subject matter of any mining authorisation or mining right, defined in the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002); and
- Any unregistered lease in respect of the property.

Does the Municipal Property Rates Act contain checks and balances to protect property owners?

Yes. The Act contains checks and balances to protect property owners. The Minister responsible for local government, with the concurrence of the Minister of Finance, can limit the cent amount in the Rand rate that municipalities impose, if such proof can be provided that such a cent amount in the Rand rate on specific category of properties is materially and unreasonably prejudicing national economic policies, economic activities across municipal boundaries or the national mobility of goods, services, capital or labour. Any sector of the economy, after consulting the relevant municipality or municipalities and organised local government, may, through its organised

structures, request the Minister responsible for local government to evaluate evidence to the effect that a particular cent amount in the Rand rate on any specific category of properties, or a rate on any specific category of properties above a specific cent amount in the Rand rate, is materially and unreasonably prejudicing any of the matters mentioned above.

The Act also provides for the Minister responsible for local government, with the concurrence of the Minister of Finance, to set an upper limit on the percentage by which rates on properties or a rate on a specific category of properties may be increased.
The Act provides for the Member of Executive Council (MEC) for local government in a province to monitor whether municipalities in a province comply with the provisions of the Act, including Ministerial decisions on the issues mentioned above.

What is property rates revenue used for?

Municipalities need a reliable source of revenue to provide basic services and perform their functions. Property rates are an important source of general revenue for municipalities. Revenue from property rates is used to fund services that benefit the community as a whole as opposed to individual households. These include installing and maintaining streets, roads, sidewalks, lighting, and storm drainage facilities; operating parks, recreational facilities and cemeteries. Property rates revenue is also used to fund municipal administration, such as computer equipment and stationery, and costs of governance, such as council and community meetings, which facilitate community participation on Integrated Development Plans (IDPs) and municipal budgets.

Municipal property rates are **set, collected,** and **used locally**. National and provincial governments do not have the power to levy rates, nor do they share in the revenue collected. Revenue from property rates is spent within a municipality, where the local community has a voice in decisions on how the revenue is spent as part of the IDPs and budget processes, which municipalities invite communities to input prior municipal council adoption of the budget.

Does the Municipal Property Rates Act make provision for municipalities to grant exemptions, rebates and reductions?

With the exception of prohibitions on rating that are entailed in sections 16 and 17 of the Act, the municipal council, taking into account inputs of its community resulting from a public participation

process, has to decide whether some rateable properties, will be rated or exempted from rating, including whether rebates or reductions will be offered to some of the rateable property categories. The Act does not pronounce on these issues, as decisions on these issues are the prerogative of each municipal council through its rating policy.

The cost of such locally determined exemptions, rebates, and reductions must be considered by the municipal council in relation to the benefit received by the local community from such relief measures.

For purposes of granting exemptions, rebates, and reductions in respect of owners of categories of properties, such categories may include the following:

- Indigent owners;
- Owners dependent on pensions or social grants for their livelihood; Owners temporarily without income;
- Owners of property situated within an area affected by a disaster within the meaning of the Disaster Management Act (Act 57 of 2002) or any other serious adverse social or economic conditions; and
- Owners of residential properties with a market value lower than an amount determined by the municipality.

How does the Municipal Property Rates Act treat newly rateable property?

The Act requires that the rating of newly rateable property other than Public Benefit Organisation (PBO) property be phased in over a period of three financial years. The phasing in period for public benefit organisation property is four financial years. Newly rateable property is defined in the Act as any rateable property on which property rates were never levied, excluding property that was incorrectly omitted from a valuation roll. When such newly rateable properties are brought into the rates net, a municipality must fully comply with the community participation process as outlined in section 4 of the Act.

What must municipalities do to implement the Municipal Property Rates Act?

Municipalities are required to:

- Strengthen internal capacity to curb excessive rates increases on implementation of new valuation rolls and supplementary valuation rolls;

- Strengthen internal capacity to conduct valuations;
- Prepare valuation rolls and supplementary valuation rolls;
- Consult the community on their draft rates policies and rates tariff schedule;
- Adopt the rates policies;
- Annually pass a resolution levying rates and publish it in the Provincial Gazette;
- Annually review rates policies;
- Adopt by-laws to give effect to the implementation of the adopted rates policies and publish the by-laws in the Provincial Gazette;
- Make the valuation rolls and supplementary valuation rolls available for public inspection, outlining the process of lodging objections.

The importance of curbing possible excessive rates that may result from the implementation of a new valuation roll

The submission of the certified valuation roll to the Municipal Manager triggers a number of processes in the Act that include the inspection of the valuation roll by property owners, the lodging of objections "in respect of any matter in, or omitted from, the (valuation) roll", the lodging of appeals against a decision of the municipal valuer regarding objections lodged. The alignment of the property rates budget to the new valuation roll is also a significant process that the municipality must undertake. General valuations have a tendency to result in increases in the market values of properties, sometimes significant increases.

Significantly high increases in the market values of properties **require that the municipality reasonably reduces the cent in the Rand rates to curb excessive rates payable by property owners**. In this exercise, due consideration must be given to the property categories that are most impacted by significant increases in property market values when the current and the new valuation rolls are compared. This can be done in a revenue neutral way and still allow the municipality some room to increase its overall property rates budget.

The practice of reducing the cent in the Rand rates when a new valuation roll is implemented and where property market values increase significantly, must be institutionalised and become best practice.

Keeping the cent in the Rand rates constant for the property categories whose market values increased significantly will not protect the property owners from significant increases in the rates payable. In fact, the rates payable, which is the cent in the Rand rate multiplied by the market

value of the property, will also increase in a scenario where the cent in the Rand rate is kept constant. **Rates payable will increase by exactly the amount by which the market value of the property increased.** Therefore, it is not sufficient to keep the cent in the Rand rate unchanged when property market values have increased significantly.

To minimise significant increases in the market values of properties on implementation of future new valuation rolls, **the municipality must ensure that during the lifespan of a valuation roll, supplementary valuations are done as and when occurrences that are catalysts for supplementary valuations occur**. These occurrences are in section 78(1) of the Municipal Property Rates Act whilst the dates on which these occurrences become effective are in section 78(4) of the Act. If the municipality implements the provisions of section 78 of the Act regularly as provided for in section 78(4), significant increases in property values will be minimised when a general valuation of all properties is done. Section 78 is very useful because it allows the municipality to effect supplementary valuations in real time. For the municipality to implement the provisions of section 78 effectively changes that take place in properties must be closely monitored, and once identified, supplementary valuations must promptly be done and be caused to take effect as provided for in section 78(4).

Furthermore, **the longer the period of validity of the valuation roll is, the more significant the changes in the market values of the properties will be** because of the length of time between the two general valuations. Long periods of validity of valuation rolls that are also characterised by failure to do supplementary valuations regularly as and when there are occurrences that warrant these, compound the problem. The shorter the period of validity of a valuation roll where the municipality does regular supplementary valuations, the more likely it is that the increases in property values in the general valuation will not be significantly high on implementation of a new valuation roll.

The table below illustrates an extract from a small municipality's valuation roll showing the change in the aggregate market values of properties per property category from one general valuation roll to the next. To properly ascertain changes in market values of properties, **new property developments** arising from newly rateable properties, previously vacant properties that are improved (for example, into new shopping malls, etc.) and/or significant improvements to previously improved properties (for example a two bedroom house now having been expanded to a four bedroom house) were **isolated and excluded**. These were excluded because **they constitute an expanded municipal property rates base ("game changer")** from which a municipality must derive additional associated revenue (reaping the dividends of local economic development and growth). To include them in the analysis (modelling) is unwise and irrational because local economic development and growth must give impetus to increased municipal revenue generation.

All but one of the property categories' aggregate values increased. The aggregate increase in this municipality's valuation roll is 21%, whilst the most significant increases are found in the residential, public service infrastructure, agricultural and mining property categories. These per category increases are 23%, 36%, 44% and 56% respectively. This means that the municipality should spend more time on these property categories when doing the exercise wherein the cent in the Rand rates is adjusted until the increases in the rates payable are reasonable and affordable. In doing this, the municipality must **generate rates payable scenarios of different properties within these property categories to ascertain the exact changes in rates payable**. In this exercise, the municipality must also take cognisance of how the impact on the rates payable by individual property owners or groups of property owners are affected by different cent in the Rand rates. The cent in the Rand rates that result in the most affordable and reasonable increases in property owners' rates payable should be determined through this exercise. Naturally, the increases in individual property values within a property category will vary from negligible to very significant.

Table 1: Extracts of changes in the Rand value of a small rural municipality's valuation roll

Categories	Valuation roll 1 (Rands)	Valuation roll 2* (Rands)	Difference
BUSINESS	1 474 306 000	1 521 205 000	46 899 000
MINING	433 400 000	676 680 000	243 280 000
INDUSTRIAL	190 210 000	243 680 000	53 470 000
PUBLIC SERVICE PURPOSE	914 035 000	923 020 000	8 985 000
RESIDENTIAL	2 319 169 600	2 861 204 000	542 034 400
AGRICULTURAL	1 084 286 000	1 558 541 000	474 255 000
PSI	36 267 000	49 243 000	12 976 000
PBO	28 600 000	27 480 000	-1 120 000
Total	**6 480 273 600**	**7 861 053 000**	**1 380 779 400**

*Valuation roll 2 is the new valuation roll

.

SECTION B: RATES POLICIES

How should municipalities deal with the poor in rates policies?

Section 3(3)(f) of the Act states that municipalities should "take into account the effect of rates on the poor and include appropriate measures to alleviate the rates burden on them." All spheres of government should be geared to alleviating poverty in order for people to enjoy life in dignity. It is for this reason that at national government level, a number of initiatives have been put in place. These include the offering of state subsidies for building of houses, social assistance in the form of grants (such as the old age grant, disability grant, etc.), allocating Local Government Equitable Share to municipalities to subsidise the provision of basic services and free basic services, and the Municipal Infrastructure Grant (MIG) to put in place the necessary infrastructure for people to access basic and free basic services. Municipalities should also be very sensitive to the plight of the poor and their rates policies must complement the national initiatives, so that the goal of enabling the poor to enjoy life in dignity is realised in practice.

Housing is a basic service for all persons. By having houses, households gain access to water and sanitation, and electricity services. If an indigent's house is attached due to inability to settle rates liabilities, not only does the indigent and his household lose shelter against natural elements and be made vulnerable to crime, but more importantly, the indigent and his/her household lose access to the other basic services, confining the indigent and his/her household to a life of hopelessness, despair, and lack of dignity.

Municipalities should, through their rates policies, target indigents within their own jurisdictions and ensure that they are not overburdened with rates liabilities, and that their properties are never attached and sold due to inability to settle rates liabilities. Section 26(3) of the Act pertaining to deferment of payment of rates should not be used to deal with the circumstances of indigents, as a later municipal action to attach and sell the indigent's property, e.g. upon the death of the indigent would create social and economic problems for his/her heirs if these happen to be indigents as well. Municipalities have to deal with the circumstances of the indigents through relief measures such as exemptions, rebates or reductions. It is important that exemptions, rebates and reductions be well targeted to indigents. This would avoid a situation whereby the wealthy and middle-income people benefit from such relief measures to the detriment of municipal revenues.

To confirm whether a property owner is a beneficiary of the old age or disability grant, a municipality may approach the Department responsible for social development or its provincial or local offices, which would confirm whether the said property owner is an old age or disability grant recipient or not.

It is recommended that municipalities exempt properties whose owners are recipients of the old age or disability grant from rating. It is also recommended that those who meet the income limitation for old age or disability grant but are not recipients of the old age or disability grant also be exempted from rates. Circumstantially, these property owners are in the same economic/financial position as the old age or disability grant recipient. Likewise, residential property owners who are unemployed (in the formal or informal economy) and without other sources of income or those temporarily without income, should be exempted from rating during the relevant municipal financial years. Section 26(3) of the Act should not be used to deal with circumstances of the property owners mentioned above. These property owners should annually provide credible proof of their circumstances to the municipality. The municipal rates policy should explicitly mention this requirement, and the requirement should be communicated to all property owners within the jurisdiction of a municipality. Specific attention should be given to those property owners who cannot read or write, and care should be taken that these are not penalised for failure to comply due to problems emanating from their inability to read or write. For the next few decades, some municipalities, in particular, rural-based municipalities would have to find creative and innovative ways of communicating and assisting citizens who can neither read nor write.

For those property owners who are recipients of the old age or disability grant, proof that they are still grant recipients is sufficient. The Department responsible for social development require these grant recipients to inform it should their income information change in order to review their eligibility for continued accessing of the grants. In addition, the Department responsible for social development conducts its own reviews of these recipients periodically. The reviews are meant to ensure that where compliance requirements by grants recipients (such as timely reporting changes regarding personal income information) were not adhered to, adjustments are effected, and if non-compliance amounts to fraud, legal proceedings are embarked upon.

How municipalities should deal with the rating of Public Service Infrastructure properties

The rating of public service infrastructure (PSI) properties is regulated and PSI should be rated according to the Municipal Property Rates Regulations on the Rate Ratio between Residential and Non-Residential Categories of Property as published in Government Notice Number R.363 of 27 March 2009. In terms of these Regulations PSI properties should not be rated in excess of 25% of the residential tariff.

How should municipalities deal with property owned and used by an organ of state for public service purposes?

These properties are defined in the Act and are composed of the following:

a) Hospitals or clinics;
b) Schools, pre-schools, early childhood development centres or further education and training colleges;
c) National and provincial libraries and archives;
d) Police stations;
e) Correctional facilities; or
f) Courts of law.

These properties exist for the sole purpose of ensuring that residents receive public services. In doing this the state does not pursue a profit or commercial objective. When these public services are not provided, there is an outcry from the affected communities. It is therefore rational to expect municipal rating decisions to provide these properties with preferential treatment compared to business and commercial properties.

What criteria should municipalities use in granting exemptions, rebates and reductions for public and independent schools?

The provincial departments responsible for education provide funding for operating expenditure to public schools and subsidies to independent schools in line with the South African Schools Act, 1996 National Norms and Standards for School Funding (National Norms and Standards) set out by the national department responsible for education. These National Norms and Standards and a list of schools that benefit from provincial departments responsible for education are available

from the provincial departments responsible for education and their regional offices. It is advisable that when municipalities review their rates policies every year, they must get hold of the most recent Norms and Standards document and a list of schools that benefit from national funding/subsidies that is applicable for that particular financial year.

The Norms and Standards for school funding can be used by municipalities as criteria for making decisions regarding the granting of relief measures (exemptions, rebates and reductions) to both public and independent schools.

Public schools

At present public schools are ranked into quintiles (Qs) in accordance with the level of economic resources of the community served by the school, physical conditions, facilities and crowding of schools. Public schools that are in or near the poorest communities (quintile 1) receive the highest funding allocations, and public schools in more affluent areas (quintile 5) receive the least funding allocations. Refer to the second column of the Table titled “Resource targeting table based on condition of schools and poverty of communities”. These allocations are for operating expenditure, as capital and personnel expenditure are dealt with separately by the provincial departments responsible for education.

*Municipalities should refer to the national department responsible for education’s website to see if there are changes

National table of targets for the school allocation (2019-2021)

	2019	**2020**	**2021**
	Rands per learner per year	Rands per learner per year	Rands per learner per year
NQ1-NQ3	1,390	1,466	1,547
NQ4	697	735	776
NQ5	241	254	268
No fee threshold	1,390	1,466	1,547
Small schools: National fixed amount	32,197	33,968	35,836

Source: South African Schools Act: National Norms and Standards for school funding 2019

For the purposes of granting relief measures (exemptions, rebates or reductions) a municipality must consider providing its relief measures in line with the above funding norms. Public schools in quintile 1 must receive more by way of rebates, and public schools in quintile 5 must receive the least rebates; if the municipality does not exempt public schools from rating. Municipalities should seriously consider exempting public schools from rating, given that they provide a basic service that benefit its local community.

Independent Schools

Government policy is to enable subsidies to be granted in relation to the socio-economic circumstances of an eligible (registered independent school) school's clientele. The level of school fees charged by an independent school is taken as an objective, publicly-available criterion that correlates well with the socio-economic circumstances of the school's clientele. Subsidy levels are therefore related to fee levels on a five-point progressive scale, as shown in the Table titled "Allocation table for independent school subsidies". Eligible schools charging the lowest fees will qualify for the highest level of subsidy. Schools charging the highest fees, in excess of 2.5 times

the provincial average cost per learner in an ordinary public school, are considered to serve a highly affluent clientele, and no subsidy will be paid to them from public funds.

Allocation table for independent school subsidies	
Fee level	Subsidy level
1. Up to 0.5 times (50% of) the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 60% of the provincial average cost per learner in ordinary public schools.
2. Higher than 0.5 and up to 1.0 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 40% of the provincial average public cost per learner in ordinary public schools.
3. Higher than 1.0 and up to 1.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 25% of the provincial average public cost per learner in ordinary public schools.
4. Higher than 1.5 and up to 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 15% of the provincial average public cost per learner in ordinary public schools.
5. Higher than 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	No subsidy.

Source: National Norms and Standard for School Funding in terms of the South African Schools Act, 1996 (Act No. 84 of 1996) dated October 1998, pg 29-30

If a municipality does not exempt independent schools from rating, it should consider when giving them rebates to prioritise those independent schools receiving state subsidy and the rebates could follow the subsidy table. Provincial education departments will have information on the subsidy levels applicable to independent schools. In a case where the municipality does not exempt public and independent schools from rating, public schools should enjoy more preferential rebates compared with independent schools in line with government policy on the funding of these kinds of schools. Municipal policy should complement national and provincial government policies. Municipalities should seriously consider exempting both public and independent schools from rating.

How can municipalities identify public benefit organisations (PBOs) conducting welfare and humanitarian, health care, education and development activities?

In terms of section 3(3)(g) of the Act, a rates policy must take into account the effect of rates on organisations conducting specified public benefit activities and registered for tax exemptions in terms of the Income Tax Act because of those activities, in the case of property owned and used by such organizations for those activities. The definition of specified public benefit activity in terms of the Act "means an activity listed in item 1(welfare and humanitarian), item 2 (health care) and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act". In addition section (3)(3)(b)(ii) and (iii) of the Act, provide for the rates policy of the municipality to determine the criteria to be applied by the municipality if it "exempts a specific category owners of properties, or the owners of a specific category of properties from payment of a rate on their properties". The same applies to granting of a rebate or a reduction in relation to rate payable on a property.

The following information will assist a municipality to identify a Public Benefit Organisation (PBO):

- The South African Revenue Service (SARS) currently gives letters to public benefits organisations as a proof that they are registered for tax exemptions in terms of the Income Tax Act.
- A municipality can request a PBO performing a specific public benefit activity within its jurisdictional area to submit a SARS letter as a proof that it is registered for tax exemption in terms of the Income Tax Act because of those activities.
- A municipality must confirm the PBO's letter with the SARS's Tax Exemption Unit in Pretoria as to whether the PBO is still registered in terms of Income Tax Act for tax exemption because of those activities. The confirmation should focus on the PBO registered number on the letter, which may be in the form of a group or individual registration and the name of the PBO. The registered number and the name of the PBO must match. In the case where a specific national or provincial PBO has branches or affiliates throughout the country or province, a municipality must verify with SARS whether a specific branch or affiliate within its jurisdiction is explicitly included/cited in the list to which SARS has granted approval to the particular PBO for tax exemption purposes in terms of the Income Tax Act.

- A municipality should contact SARS to access information on registered PBOs in terms of Income Tax Act performing specific public benefit activity as defined in the Act.
- Each year the PBO must apply to the municipality to be given consideration regarding granting of exemptions, rebates or reductions, if such relief measures are still part of the municipality's current rates policy. Each year the municipality must verify/confirm whether the PBO is still registered with SARS regarding such tax exemption.

The following are the details of the specified public benefit activities listed in item 1 (welfare and humanitarian), item 2 (health care) and item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act as per SARS' "Tax Exemption Guide for Public Benefit Organisations in South Africa (issue 5)".

Welfare and Humanitarian

(*a*) The care or counseling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.
(*b*) The care or counseling of poor and needy persons where more than 90 per cent of those persons to whom the care or counseling are provided are over the age of 60.
(*c*) The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatized persons.
(*d*) The provision of disaster relief.
(*e*) The rescue or care of persons in distress.
(*f*) The provision of poverty relief.
(*g*) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.
(*h*) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.
(*i*) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.
(*j*) The promotion or advocacy of human rights and democracy.
(*k*) The protection of the safety of the general public.
(*l*) The promotion or protection of family stability.
(*m*) The provision of legal services for poor and needy persons.

(*n*) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.

(*o*) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(*p*) Community development for poor and needy persons and anti-poverty initiatives, including—

(i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;

(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or

(iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.

(*q*) The promotion of access to media and a free press.

Health Care

(a) The provision of health care services to poor and needy persons.

(*b*) The care or counseling of terminally ill persons or persons with a severe physical or mental disability, and the counseling of their families in this regard.

(*c*) The prevention of HIV infection, the provision of preventative and education programmes relating to HIV/AIDS.

(*d*) The care, counseling or treatment of persons afflicted with HIV/AIDS, including the care or counseling of their families and dependents in this regard.

(*e*) The provision of blood transfusion, organ donor or similar services.

(*f*) The provision of primary health care education, sex education or family planning.

Education and Development

(*a*) The provision of education by a “school” as defined in the South African Schools Act, 1996, (Act No. 84 of 1996).

(*b*) The provision of “higher education” by a “higher education institution” as defined in terms of the Higher Education Act, 1997, (Act No. 101 of 1997).

(*c*) “Adult education and training”, as defined in the Adult Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

(*d*) "Continuing education and training" provided by a "public college" or "private college" as defined in the Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act. (*e*) Training for unemployed persons with the purpose of enabling them to obtain employment.

(*f*) The training or education of persons with a severe physical or mental disability.

(*g*) The provision of bridging courses to enable educationally disadvantaged persons to enter a higher education institution as envisaged in subparagraph (*b*).

(*h*) The provision of educare or early childhood development services for pre-school children.

(*i*) Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.

(*j*) The provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities contemplated in subparagraphs (*a*) to (*h*).

(*k*) Career guidance and counseling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (*a*) and (*b*).

(*l*) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)(*c*A)(i), carrying on activities envisaged in subparagraphs (*a*) to (*g*).

(*m*) Programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole school development, safety and security at schools, pre-schools or educational institutions as envisaged in subparagraphs (*a*) to (*h*).

(*n*) Educational enrichment, academic support, supplementary tuition or outreach programmes for the poor and needy.

(*o*) The provision of scholarships, bursaries, awards and loans for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazett*e.

(*p*) The provision or promotion of educational programmes with respect to financial services and products, carried on under the auspices of a public entity listed under Schedule 3A of the Public Finance Management Act.

(*q*) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph

(*r*). The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998)

What other information can municipalities use to identify independent schools owned by a public benefit organisations (PBO)?

The school must be approved and legally registered through the provincial departments responsible for education by the provincial department responsible for education. Each registered school will have an education management information system (EMIS) number allocated to it by the provincial department. It would be advisable for municipalities to require independent schools to supply the number in their application to the municipality. The municipality may verify the (EMIS) number with the directorate responsible for the registration of independent schools at the provincial office of the department of education. Alternatively, there are education regions and/or education districts in each province where the region or district office should have the names of the approved and registered independent schools. A municipality can follow up with the department of education at provincial or at regional or district level to check whether the independent school is still registered or not.

How should municipalities deal with the rating of agricultural properties?

Agricultural properties are regulated and should be rated according to the Municipal Property Rates Regulations on the Rate Ratio between Residential and Non-Residential Categories of Property. In terms of these Regulations agricultural properties should not be rated in excess of 25% of the residential tariff.

Can a municipality determine other categories of properties in addition to those listed in section 8(2) of the Act?

In addition to the property categories that the municipality must determine in terms of section 8(2) of the Act, a municipality may only determine other property categories in terms of section 8(3) and 8(4) of the Act.

SECTION C: IMPERMISSIBLE RATES

IMPLEMENTATION OF SECTION 16 OF THE ACT: CONSTITUTIONALLY IMPERMISSIBLE RATES

Section 16(1) of the Act states that "in terms of section 229(2)(a) of the Constitution, a municipality may not exercise its power to levy rates on property in a way that would materially and unreasonably prejudice: national economic policy, economic activities across its boundaries, or the national mobility of goods, services, capital or labour".
In terms of section 16(5) of the Act the Minister, after consultation with the Minister of Finance, may by notice in the Gazette issue guidelines to assist municipalities in the exercise of their power to levy rates consistent with section 16(1).

How can a municipality exercise its power to levy rates that are consistent with section 229(2)(a) of the Constitution?

Although municipal councils set their rate taking into account their own unique circumstances and the expenditure they need to finance from rates revenue, they need to ensure that they do not infringe upon section 229(2)(a) of the Constitution.

Building on a sound monetary and fiscal policy, South Africa's macro-economic policy aims at improving economic growth, economic development, employment creation and poverty reduction, focusing particularly on microeconomic constraints to economic growth. Municipalities in exercising their power to levy rates on property in such a manner that they are consistent with section 229(2)(a) of the Constitution should consider government's broad macro-economic policy framework.

The macro-economic issues that have to be taken into consideration by a municipality, in developing its rates policy, to ensure that it exercises its power to levy rates on property in a way that it would not materially and unreasonably prejudice the matters listed in section 229(2)(a) of the Constitution are the following:

(a) The need for promotion of economic growth;

(b) Effective co-ordination of economic policy across the three spheres of government;
(c) Consistency with macro-economic priorities of maintaining low and stable inflation rate;
(d) Rates should to a greater extent be set commensurate with the extra costs of providing local government services so that ratepayers are not unnecessarily overburdened;
(e) Rates should be set taking cognisance of other local government charges, levies and taxes to ensure overall efficiency in municipal service provision and the ability of ratepayers to fulfil all these municipal financial obligations;
(f) The need to increase competitiveness of exporting businesses located within the municipal area, to support small business development and to foster rapid job creation;
(g) The need to attract and promote both national and foreign capital investment; and
(h) Rates must be consistent with broad developmental priorities.

The following general principles should guide municipalities:

Promotion of economic growth:

Sustainable economic growth depends on capital investment to build long-term capacity and raise productivity. Municipalities should rate economic sectors reasonably so that they are able to invest and expand their operations within the jurisdiction of the municipality.

Policy coordination:

As a rule, local government policies, including rates policy should not be developed in isolation. Being at the micro level of policy implementation, local government can reinforce or weaken the successful implementation of national economic policies. Therefore, if government is to succeed in the rollout of its plans it is important that local government serve as a basis for implementing national policy at the grassroots level and reinforce policy fundamentals of national government. Thus prior adoption of any local policy including rates policy, it should have taken into consideration the aims and the objectives of national economic policies. Municipalities should annually review prevailing rates policy, and if necessary amend its rates policy to ensure that the rates policy continues to serve the needs of communities within their municipal jurisdiction area. For example, it could be that the prevailing municipal rates policy is a strong inhibitor of businesses locating within their municipal jurisdiction area due to excessive rating of particular economic sectors such as commercial, industrial and farming.

Contributing to achieving low and stable inflation rate:

The way in which municipalities set rates has an impact on the level of inflation. Municipal rates are set once a year and are usually not adjusted until the following year. Municipal rates are classified as administered prices. Government's objective is to ensure that these prices do not increase excessively, particularly since inflation has an impact on lower income groups. To this end, national government has identified the need for rates, to a greater extent, correctly reflect the cost of delivering and maintaining general municipal services within the municipal jurisdiction area. Hence municipalities should have an understanding of costs incurred in delivering and maintaining general municipal services in order to set appropriate and reasonable rates.

Although property rates do not influence the level of consumer inflation directly, but eventually property rates work their way into the costs of doing business and thus, affect producer inflation. In order to facilitate planning by economic sectors and households it is important for local government to undertake long term planning indicating what projected rates will be charged in line with sections 17(1)(c) and 20(1)(b)(ii) of the Municipal Finance Management Act (MFMA). This will help to shape the expectations of economic sectors and households and will be in line with the planning horizon of national government. Such long term planning together with the community consultation process on the effects of rates may have a dampening effect on the level of inflation.

Support for business, increasing job creation and minimising distortions on economic behaviour:

Government policy regarding industrial policy reform is to increase export competitiveness and develop small, medium and micro enterprises (SMMEs). This is supported by a national campaign to boost small and medium firm development, the strengthening of competition policy and the development of industrial cluster support programmes. Small business development is a key element of Government's strategy for economic growth and job creation. The promotion of direct foreign investment in South Africa remains a significant element of government's national economic policies. Municipalities when they exercise their power to levy rates should be responsive to the demands on the South African economy since its re-entry into a sophisticated and highly competitive world economy. Municipalities as zones for the location of small businesses must take note of this overall objective and not impose excessive rates that will a have negative impact on the development of SMMEs and export businesses. Instead their rates policies should

strive to provide incentives for investment in productive capacity, agriculture, and infrastructure in their municipal areas, the results of which will contribute to reduction of unemployment.
Municipalities in providing exemptions, reductions and rebates should ensure that this does not result in major distortions in economic behaviour. Economic stability cannot be promoted through attempts to shift the rates burden predominantly onto any singular dimension of economic activity. Incentives should be structured such that they encourage economic activities within municipal area and encourage property ownership.

Property rates together with other local government charges such as on electricity and water have an impact on the costs of doing business. Municipalities need to take into consideration the implications of high rates on business development and employment in their areas of jurisdiction. The impact of rates on competitiveness of exporting firms located within their area must also be taken into consideration. Municipalities should also note the need to move the focus of small businesses from small to large scale operations (whether retail or production activities).

Contribution toward the improvement of social policies:

The need to promote economic growth requires a balance between the social need of the community and the requirements of economic sector and revenue needs of the municipality. A municipal rates policy should also be based on political, social and economic cohesion and inclusion to better facilitate economic growth and development.

SECTION 17 OF THE ACT: OTHER IMPERMISSIBLE RATES

What kinds of properties are municipalities prohibited from levying rates on?

In terms of section 17(1) of the Act municipalities are prohibited from levying rates on the following kinds of properties listed below and some of which are explained thereafter:

(a) On public service infrastructure that is excluded from rating in terms of section 17 (1)(Aa);
(b) On the first 30% of the market value of the rest of public service infrastructure as defined in the Act;
(c) On any part of the seashore;
(d) On any part of the territorial waters of the Republic of South Africa;
(e) On any islands of which the State is the owner;
(f) On protected areas;

(g) On mining rights or mining permits;
(h) On land reform beneficiaries;
(i) On the first R15 000 of the market value of residential property and properties used for multiple purposes of which one or more component thereof are used for residential purposes; and
(j) Property used primarily for religious public worshipping purposes, including an official residence occupied by the officiating office bearer.

What is a seashore in terms of the Seashore Act, 1935 (Act No. 21 of 1935)?

The seashore means the water and the land between the low-water mark and the high-water mark. The low-water mark means the lowest line to which the water of the sea recedes during the period of ordinary spring tides. The high-water mark means the highest line reached by the water of the sea during ordinary storms occurring during the stormiest period of the year, excluding exceptional or abnormal floods.

What are territorial waters of the Republic of South Africa in terms of the Maritime Zones Act, 1994 (Act No. 15 of 1994)?

Territorial waters mean the sea within a distance of 12 nautical miles from the baseline. The baseline is determined in accordance with the relevant sections of the Maritimes Zones Act of 1994. Harbours are part of the internal water of the Republic of South Africa.

Protected areas

In terms of section 17(1)(e) of the Act, a municipality may not levy a rate on those parts of a special nature reserve, national park or nature reserve within the meaning of the National Environmental Management: Protected Areas Act (Act No. 57 of 2003), or of a national botanical garden within the meaning of the National Environmental Management: Bio-diversity Act, 2004, which are not developed or used for commercial, business, agricultural or residential purposes. In addition, section 17(2)(a) states that the exclusion from rates of a property referred to in section 17(1)(e) lapses if the declaration of that property as a special nature reserve, national park, nature reserve or national botanical garden, or as part of such a reserve, park or botanical garden, is withdrawn in terms of the applicable Act mentioned in that section 17(1)(e). A municipality can levy a rate

only within those portions of a protected area and/or national botanical garden that are developed or used for business, commercial, agricultural or residential purposes.

How will municipalities identify and know these protected areas, so that they can comply with/implement section 17(1)(e)?

The Department responsible for environmental affairs has a register of protected areas in terms of National Environmental Management: Protected Areas Act. The register contains information of all declared protected areas (national and provincial protected areas). Municipalities can also request owners of protected areas to provide proof of declaration by the Minister or MEC as published in the gazette.

What must be excluded from valuation and rating in so far as mining rights are concerned?

Structures under the surface of the earth related to mineral extraction and the value of the mining rights and permits.

Land reform beneficiaries

In terms of section 17(1)(g) of the Act, a municipality may not levy a rate "on a property belonging to a land reform beneficiary or his or her heirs, dependants or spouse, provided that this exclusion lapses ten years from the date on which such beneficiary's title was registered in the office of the Registrar of Deeds". If the title has changed hands from the land reform beneficiary or his or her heirs, dependants or spouse to other person(s) such person(s) will not enjoy the 10 years exclusion from paying of rates provided for in section 17(1)(g) of the Act.

Land reform beneficiary in relation to a property is defined in terms of the Act as a person who:

(a) acquired the property through: the Provision of Land and Assistance Act, 1993(Act No. 126 of 1993) or the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);
(b) holds the property subject to the Communal Property Associations Act, 1996 (Act No. 28 of 1996); or

(c) holds or acquires the property in terms of such other land tenure reform legislation as may pursuant to section 25(6) and (7) of the Constitution be enacted after this Act has taken effect.

The word “person” includes a juristic person, which means that land transferred to communities in terms of (a), (b) and (c) cited above, such communities should enjoy the 10 year rates holiday like an individual person in terms of section 17(1)(g) of the Act. In the case where a property was acquired through (a) or (b) above, the ten year rates holiday must be counted from the first registration of such land in the Office of Registrar of Deeds, and not according to the date in which the same property was endorsed by the Registrar of Deeds as having been vested in the community.

How will a municipality identify land reform beneficiaries?

To identify land reform beneficiaries a municipality must approach the Office of the Registrar of Deeds or such other offices as may be established by the Department responsible for land affairs, and request the list of land reform beneficiaries within its own municipal jurisdiction.

Although municipalities may be able to identify land reform beneficiaries by requiring these beneficiaries to submit Deeds of Transfer to municipalities, municipalities are strongly advised not to pursue this route as it is likely to unnecessarily disadvantage a vast majority of possible beneficiaries due to various circumstances such as poor communication between the municipality and its constituency in general, lack of easy access to municipal offices, transportation costs, etc.

How will a municipality monitor the length of the period the land reform beneficiary should be from paying rates?

Municipalities should through section 23(3)(d) of the Act indicate in part B of the property register the date of the land reform beneficiary's registration in the Office of the Registrar of Deeds, as well as when the ten year rates holiday would expire.

Who is liable for rates (between the state and land tenure holder) in relation to a land tenure right?

In terms of section 24(1) of the Act, rates levied by a municipality on a property must be paid by the owner of property subject to chapter 9 of the Municipal Systems Act. Owner in relation to a

land tenure right, in terms of the Act, means a person in whose name the right is registered or to whom it was granted in terms of legislation, such a person is liable for the payment of property rates.

Mandatory exclusion on the first R15 000 for residential property

Does the first R15 000 residential property exclusion from rating in terms of section 17(1)(h) of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) apply to improved property and vacant land categorised for residential purposes?

Yes, a municipality may not levy a rate on the first R15 000 of the market value of a property be it vacant land and/or improved property that has been categorised by a municipality as a residential property.

Does the first R15 000 residential property exclusion apply to each individual right holder in the case of property transferred as a whole to a community?

Yes, as such rights are conferred to the individual rights holders in perpetuity, thus, they are not based on temporary permission granted by the owner or lawful occupier of the land.

Can a person who owns more than one residential property receive the first R15 00 exclusion in relation to each property?

Yes, in a case where one person owns more than one residential property within a municipality, such a person is entitled to receive R15 000 relief for each property.

In the case of properties used for multiple purposes, does the first R15 000 exclusion apply to a property as a whole or the residential component of such a property?

The first R15 000 that the municipality cannot rate shall be applicable to the property as a whole, provided one or more components of the property are used for residential purposes.

In a case where a municipality apportioned property to its different uses the first R15 000.00 will be applicable to the component apportioned for residential purposes.

Examples of properties used for multiple purposes are the following:

(a) A block of flats with businesses on the ground floor;
(b) A double storey-building with a shop on the ground floor and the residential quarters on the top floor;
(c) A residential property with a spaza shop;
(d) A farm that consists of the residential portion, a farm portion, factory portion and an unused land, etc.

How can a municipality determine a property category for a property used for multiple purposes?

In its rates policy a municipality must determine how it would categorise properties used for multiple purposes for rating purposes. Based on its circumstances, a municipality can determine the categories of properties used for multiple purposes using the following:

(a) The entire property can be categorized in terms of the permitted use if the permitted use is regulated (zoning);

(b) The entire property can be categorized in terms of the dominant (main or primary) use; or

(c) If the market value of the property can be apportioned, each portion of the property must be categorised according to its individual use and rated accordingly. If the market value of the property cannot be apportioned to its various use purposes, then such a property must be categorised as either (a) or (b) above and rated accordingly.

Where a municipality provides exemptions, rebates and reductions to specific category of owners of properties or the owners of a specific category of properties, these should equally apply to a property category used for multiple purposes based on how a municipality categorise those properties in terms of section 9.

Property used primarily for religious public worshipping purposes, including an official residence occupied by the officiating office-bearer.

Does the prohibition from levying rates still apply in the case where one religious organisation avails another religious organisation the use of its (registered) property for primarily public worshiping purposes?

Yes, in terms of section 17(1)(i) of the Act the deciding factor as to whether rates should be levied on a property owned and registered by a religious organisation is that the property in question should primarily be used as a place of public worship. Therefore, it does not matter whether the property is used by the same religious organisation that owns it or by another religious organisation that does not own it. However, in a case where one religious organisation allows another religious organisation the use of its property, there should definitely be no profit-making involved. If money changes hands between the two religious organisations, such money should be limited to settlements of other municipal financial obligations such as payments for user service charges e.g. on water, electricity, refuse removal, etc. For purposes of section 17(1)(i) of the Act, the religious community is regarded as a non-profit making entity regarding the use of the property, thus, any deviation from this principle automatically disqualifies the religious community from enjoying the benefits conferred by section 17(1)(i) of the Act.

Does the prohibition from levying rates still apply in the case where one religious organisation avails another religious organisation's office-bearer the use of its (registered) official residence associated with the place of public worship?

The same discussion above regarding a property owned by a religious community and used primarily as a place of public worship holds.

Does section 17(1)(i) of the Act cover the case of a property registered in the name of a non-religious entity but used for public worship?

No, in the case of a property owned and registered by a non-religious entity, but made available to the religious community for use as a place of public worship, such non-religious entity is liable for payments of rates on such a property as section 17(1)(i) of the Act does not cover these instances.

SECTION D: LEVYING OF PROPERTY RATES ON SECTIONAL TITLE SCHEMES, TIME SHARING INTEREST AND SHARE BLOCK COMPANY

Who is liable for property rates levied on a sectional title unit, time sharing interest and share in a share block company?

In terms of section 10 of the Act, an owner of the sectional title unit is liable for a rate levied by a municipality on such a unit. The body corporate is liable for payment of rates in those cases where it is the owner of any specific sectional title unit.

The owner in relation to the time sharing interest in a time sharing property is the management association. The owner in relation to a share in a share block company is the share block company.

Can the municipality enter into an agency agreement with a body corporate to collect rates from the owners of sectional title units on behalf of the municipality?

Although section 25(3) of the Act says that a "a body corporate controlling a sectional title scheme may not apportion and collect rates from the owners of the sectional title units in the scheme", this section does not preclude a municipality from taking an initiative of entering into an agreement with a body corporate for the body corporate to collect amounts due for rates on behalf of the municipality.

How is common property taken into account when a unit in a sectional title scheme is valued?

Common property cannot be valued separately although it is one of the value forming attributes of a unit, the other two being exclusive use areas and the unit section.
The market value determined for each sectional title unit must include the value of the following:

(a) Any allocation to that unit of an exclusive use area

An exclusive use area is a part or parts of the common property for the exclusive use by the owner of one or more units, (e.g. garage and small garden). The body corporate transfers the right to an

exclusive use of the common property by way of registration of a notarial (legal endorsement on the document in the deeds office) deed, entered into by the unit owners and the body corporate.

(b) any other interest pertinent to the unit

A sectional title unit comprises of a section and the undivided share of the common property (e.g. swimming pool and a garden). A section is a portion of the building, flat, shop or an office, that is owned by a person. The undivided share in a common property is apportioned to that unit in accordance with its participation quota. Participation quota of a unit means the percentage determined by dividing the floor area of the unit by the total floor area of all units in the sectional title scheme.

SECTION E: LIABILITY FOR RATES FOR AGRICULTURAL PROPERTY OWNED BY MORE THAT ONE OWNER IN UNDIVIDED SHARES PRIOR TO THE COMMENCEMENT OF THE SUBDIVISION OF AGRICULTURAL LAND ACT, 1970.

In terms of section 24(2)(b) of the Act, a municipality must, in respect of agricultural property that is owned by more than one owner in undivided shares where the holding of such undivided shares was allowed before the commencement of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), consider whether in the particular circumstances it would be more appropriate for the municipality to:

i. Hold any one of the joint owners in terms of section 24(2)(a) of the Act, liable for all rates levied in respect of the agricultural property concerned; or
ii. Hold any joint owner only liable for that portion of the rates levied on the property that represents that joint owner's undivided share in the agricultural property.

How will a municipality implement section 24(2)(b) of the Act?

There are three scenarios to be considered, and for each a possible solution is provided:

Scenario 1

If the joint property owners are all available and are traceable, the issue of who is liable for rates can be dealt with in the context of whether they have entered into an agreement or not regarding payment of rates liabilities.

In a circumstance where joint owners of the agricultural property have an agreement among themselves that a specific joint owner is liable for all rates levied in respect of that agricultural property, a municipality must hold such a specific joint owner liable for all rates levied in respect of the agricultural property. Such an agreement must be in writing and signed by all affected parties, and a certified copy thereof must be submitted to the municipality.

In a circumstance where joint owners of the agricultural property have an agreement among themselves that each joint owner is liable for that portion of rates on that property that represent that joint owner's undivided share in the agricultural property, a municipality must hold each joint owner liable for their portion of rate levied on the agricultural property. Such an agreement must be in writing and signed by all affected parties, and a certified copy thereof must be submitted to the municipality.

In a circumstance where joint owners of the agricultural property have not informed a municipality in writing as to who is liable for rates regarding agricultural property, a municipality may apply either 24(2)(b)(i) or (ii) of the Act. Applying section 24(2)(b)(i) of the Act is preferable in a case where that individual joint owner is regarded as the head of the affected "joint property owners". Applying section 24(2)(b)(i) of the Act under this circumstances has an advantage of reducing the administrative burden cost on the municipality, but it limits the payment enforcement measures in terms of withholding provision of municipal services to that particular individual as opposed to effecting the withholding to the other joint owners. Applying section 24(2)(b)(ii) of the Act appears to be a fair method of apportioning rates payment liability to all joint owners, but may have administrative problems when that account is in arrears as payments made on such an arrear account will be difficult to split unless one gets the exact split from the person paying and the (municipal) computer system has a way of remembering which joint owner paid what and when. In the case where any of the joint owners is occupying or using either the whole or significant portion of the land in question, applying section 24(2)(b)(i) of the Act appears to be the best approach.

Scenario 2

If the joint property owners are not traceable with the exception of one joint owner and such joint owner is occupying or using the entire property or a significant larger portion of the entire property (e.g. 80%), the municipality should hold that joint owner liable for the total rates bill for that entire property.

Scenario 3

If the joint property owners are not traceable with the exception of one joint owner and such joint owner is occupying or using a small portion of the entire property, the municipality should consider holding that joint owner liable for that portion of rates levied on the entire property that represents that joint owner's undivided share in that property.

SECTION F: DEFERRAL OF PAYMENT ON RATES LIABILITIES: SECTION 26(3) OF THE ACT

In terms of section 26(3) of the Act, payment of a rate may be deferred only in special circumstances. These include property owners whose properties have been affected by droughts, floods, wild fires and other natural disasters.

In a case where a municipality allows deferral of payment of rate, such a municipality must consider the following conditions:

These ratepayers must provide a security/guarantee and/or a credible rates payment plan, thus, ensuring that by the end of the agreed period their differed rates will be settled. Municipalities must be sensitive to circumstances of emerging farming community and emerging business community so that these communities are not disadvantaged by application of the security/guarantee requirement. Municipalities must complement rather than undermine national economic objectives around the promotion of Black Economic Empowerment (BEE).

- A house cannot be used as a security in circumstances where its attachment if the undertaking to settle rates by the end of agreed period would result in homelessness to the owner and his/her family or his/her heirs as this would compound the homeless situation which government is trying to address through various programs of the Department responsible for housing.
- Deferral of rates cannot be applied to properties owned by indigent households, including households led by orphans.
- A municipality must consider each and every application for deferral of rates, pay special attention to the merits and demerits of each, in particular, those applications that do not relate to national disasters, and consider financial implications thereof in so far as the cash-flow of the municipality is concerned.

SECTION G: RECOVERY OF RATES FROM TENANTS, OCCUPIERS AND AGENTS

RECOVERY OF RATES IN ARREARS FROM TENANTS AND OCCUPIERS: SECTION 28 OF THE ACT

In order to know which properties have tenants, the municipality will have to act against all properties where rates are in arrears. This must be in a structured basis, starting with the suspension of the privilege to pay the annual rates in monthly instalments where the monthly instalments have not been paid for 3 consecutive months.

As soon as the annual rates become overdue or the monthly rates have been raised for the remaining months in the financial year, an overdue notice must be issued to the owner of the property at the address selected by the owner.

If there is no response from the owner, a further overdue notice should be served at the property with a rider that the services to the property will be terminated within a reasonable period, the minimum being 30 days, should the rates not be paid or satisfactory arrangements made. This notice should enquire whether the occupier is a tenant and state that the municipality can, legally, attach the rental or other payments due to the owner to settle the arrears regarding rates in terms of section 28 of the Act. If the occupier is a tenant and agrees to direct to the municipality rent and other monies due to the owner and not yet paid to the owner, no further actions should be taken against the tenant and the property. Should the tenant refuse to co-operate, other debt management actions must be implemented as per the municipal credit control and debt collection policy.

The payment by the tenant in terms of this section of the Act must be recorded on the property file for future reference.

However, should the payments by the tenant(s) not be able to redeem the arrears within the next 12 months, the monies must be attached and the next step in the debt management plan (of the municipality) implemented. The municipality should consider extending the 12 months period to such longer period that they deem fit, based on merit.

RECOVERY OF RATES FROM AGENTS: SECTION 29 OF THE ACT

Although section 29 of the Act is not limited to recovery of rates in arrears, it appears that municipalities can effectively use this section of the Act to recover rates in arrears of those property owners, from such managing agents.

In order to know which properties have managing agents, the municipality will have to act against all properties where rates are in arrears. This must be in a structured basis, starting with the suspension of the privilege to pay the annual rates in monthly instalments where the monthly instalments have not been paid for 3 consecutive months. As soon as the annual rates becomes overdue or the monthly rates have been raised for the remaining months in the financial year, an overdue notice must be issued on the owner of the property at the address selected by the owner.

If there is no response from the owner, a further overdue notice should be served at the property with a rider that the services to the property will be terminated within a reasonable period, the minimum being 30 days, should the rates not be paid or satisfactory arrangements made. This notice should enquire whether the occupier is paying rent and other monies to an agent of the owner and state that the municipality can, legally, attach the net payments (i.e. gross receipts by the agent less commission due to the agent on those gross receipts) due to the owner by the agent to settle the arrears. Should the tenant refuse to co-operate, the services should be disconnected and the other debt management actions implemented.

If the managing agent is identified through the tenant's assistance, a copy of the notice, which was served on the tenant, must be served on the agent stating that failure to co-operate would lead to actions being taken against the agent as well as the termination of the services at the supply address. If the agent assists and the net amount due to the owner, is paid to the municipality, no further actions should be taken against the agent, tenant and the property. The payment by the agent in terms of this section in the Act must be recorded on the property file for future reference.

However, should the payments by the agent not be able to redeem the arrears within the next 12 months, the monies must be attached and the next step in the debt management plan (of the

municipality) implemented. The municipality should decide extending the 12 months period to such longer period that they deem fit, based on merit.

SECTION H: PUBLIC NOTICE OF VALUATION ROLLS AND ASSISTANCE TO OBJECTORS

PUBLIC NOTICE OF VALUATION ROLL: SECTION 49(1)(a) OF THE ACT

Section 49(1) of the Act, states that "the valuer of a municipality must submit the certified valuation roll to the municipal manager".

What does certify means in relation to the valuation roll?

It means attaching a signature on the valuation roll of a municipality by the valuer of a municipality.

Who has to certify the valuation roll?

The valuer of a municipality at the completion of the valuation roll must certify such valuation roll prior to submission to the municipal manager.

ASSISTING AN OBJECTOR TO LODGE AN OBJECTION IF THAT OBJECTOR IS UNABLE TO READ OR WRITE

Section 50(3) of the Act states "a municipal manager must assist an objector to lodge an objection if that objector is unable to read and write".

How does the municipality inform an objector that is unable to read or write that they will assist him or her with the completion of the objection?

Through media (e.g. radio) and public participation (ward committee meetings or community meeting).

NOTES

CONTACT PERSON

Should municipalities require any further information on matters dealt with in this Circular, request for such information should be directed to the Department of Cooperative Governance for the attention of:

The Director: Municipal Property Rating
Postal address: Private Bag X804 Pretoria, 0001
Telephone: 012-334-4933
Facsimile: 012-334-4811
Email: mpra@cogta.gov.za
Website: www.cogta.gov.za