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Department:
Provincial and Local Government
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT

NO. 6 OF 2004

GENERAL GUIDELINES

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SECTION A:

GENERAL BASIC INFORMATION ON PROPERTY RATES

What are municipal property rates?

Property rates are a Cent amount in the Rand levied on the market value of immovable property, that is, land and buildings, rights of way, easements and servitude.

Municipalities have a long history of rating property in terms of the old Provincial Ordinances (of the former Cape, Natal, Orange Free State and Transvaal provinces), especially in the formerly white urban areas. In addition, the Constitution of the Republic of South Africa gives municipalities the power to value and rate property in their area of jurisdiction. The Municipal Property Rates Act replaces the old system of property valuation and rating based on the old Provincial Ordinances. It does not give municipalities the original power to rate property; it merely seeks to regulate an original power vested in municipalities by the Constitution.

Who is liable for the payment of property rates?

All property owners are liable for the payment of rates. Therefore, all property owners, including commercial, residential (homes), agriculture, government, etc, are included in the definition of property. Land tenure rights such as permission to occupy (PTOs) commonly found in communal areas, are also included in the definition of property. Municipalities must ensure that unit owners in sectional title schemes are registered with them because they will no longer be able to rate the body corporate.

How are property rates determined?

The financial liabilities for property rates are calculated by multiplying the market value of immovable property (land plus buildings) by a Cent amount in the Rand that a municipal council has determined. For example:

- If the market value of immovable property (land and buildings) is R 50 000, and
- The Cent amount in the Rand is R0.015 (which is 1.5 Cent), then
- Amount due for property rates = R50 000 x 0.015 = R750 for the whole year, which means that every month the property owner will pay R62.5 (this is calculated by dividing R750 by 12 as the

year has 12 months) to the municipality.

If the immovable property in question is used as a residential property (home) or if it is used for multiple purposes, provided one or more of its components are used for residential purposes:

- The Cent amount in the Rand will be applied after deducting the first R15 000 of the market value of such residential property (this is a requirement of law through 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);
- 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 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 the Municipal Finance Management 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. Professional, independent valuers, who in terms of section 39 of the Municipal Property Rates Act, must be persons registered as “a professional valuer or professional associated valuer in terms of the Property Valuers Profession Act, 2000 (Act No.47 of 2000)” know how to value properties which have not yet been sold in terms of the principle of “willing seller to a willing buyer”. All municipalities through 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 immovable 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 Minerals Act (1991);

- 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 of Provincial and Local Government, with the concurrence of the Minister of Finance, can limit the Cent amount in the Rand that municipalities impose, if such proof can be provided that such a Cent amount in the Rand 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 for Provincial and Local Government to evaluate evidence to the effect that a particular Cent amount in the Rand on any specific category of properties, or a rate on any specific category of properties above a specific Cent amount in the Rand, is materially and unreasonably prejudicing any of the matters mentioned above.

The Act also provides for the Minister for Provincial and 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 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 the most important source of general revenue for municipalities, especially in developed areas. 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, storm drainage facilities, buildings, operating clinics, 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 issues of Integrated Development Plans (IDPs) and municipal budgets.

Property rates are **set, collected,** and **used locally**. National and provincial governments including traditional leaders do not have the power to levy rates (section 229 of the Constitution vests the power with municipalities), nor do they share in the revenue collected. Revenue from property rates is spent within a municipality, where the citizens and voters have a voice in decisions on how the revenue is spent as part of the Integrated Development Plans (IDPs) and budget processes, which municipalities invite communities to input prior municipal council adoption of the budget.

Are valuations and rating going to be done on all properties within the municipal jurisdiction including rural areas?

All municipalities must value all properties within their jurisdictions, provided that properties mentioned in section 7(2)(a) of the Act must be valued only to the extent that the municipality intends to levy a rate on those properties. Properties contemplated in section 7(2)(a)(iv) are those commonly found in rural areas, in particular, in communal areas. Municipalities must pay particular attention to section 30(2)(b) of the Act and decide whether they wish to make applications to the Minister regarding the granting of an exemption to value certain properties such as protected areas, land reform beneficiaries and properties register in the name of and used primarily as a place of public worship by a religious community, including an official residence registered in the name of that community which is occupied by an office-bearer of that community who officiates at services at that place of worship.

With the exception of prohibitions on rating that are entailed in section 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, including those listed in section 7(2)(a) of the Act, will be rated or exempted from rating, including whether rebates or reductions will be offered to some of the rateable property categories. Therefore, the municipal council itself has to make a decision as to whether rural properties within its jurisdiction will be rated, and if rated, whether relief measures by way of rebates and reductions will be offered. The Act does not pronounce on these issues, as decisions on these issues are the prerogative of each municipal council.

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

In addition to the mandatory prohibitions on rating (section 16 and 17 of the Act), the Act provides for municipalities to grant exemptions, rebates, and reductions in their rates policies based on local conditions and circumstances. 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 must 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 (2002); or
  - any other serious adverse social or economic conditions;
- Owners of residential properties with a market value lower than an amount determined by the municipality; or
- Owners of agricultural properties who are *bona fide* farmers

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

The Act requires that the rating of newly rateable property be phased in over a period of three financial years. Newly rateable property is defined in the Act as any rateable property on which property rates were not levied by 30 June 2005, excluding property that was incorrectly omitted from a valuation roll and for that reason was not rated before that date. That means those property categories as opposed to individual properties within a property category in any area in which property rates were not levied by 30 June 2005, which means that newly rateable properties coming into the rates net of a municipalities from 1 July 2005 must enjoy compulsory phasing-in discounts provided for in section 21 of the Act. Also, 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.

When will the Municipal Property Rates Act become effective?

The Municipal Property Rates Act will commence operating on 2 July 2005, which means that subject to regulations on transitional arrangements pertaining to the implementation of the Act that deals with the interface between valuations and rating based on the old Provincial Ordinances and the Act, the Act would mainly impact on municipal budgets that commence operating on 1 July

2006.In terms of transitional arrangements on the implementation of the Act, certain provisions of the Act will apply immediately on all municipalities regardless of whether their valuation and rating is based on the old Provincial ordinances or the new Act, whereas other provisions of the Act will only apply to those municipalities whose valuations and rating is based on the new Act.

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

Municipalities are required to:

- Develop rates policies;
- Strengthen internal capacity to conduct valuations;
- Prepare general property valuation rolls;
- Consult the community on their draft rates policies;
- Adopt rates policies;
- Adopt by-laws to give effect to the adopted rates policies;
- Gazette the property valuation rolls for public inspection outlining also the process of raising objections; and
- Outline to the public the appeal process regarding outcome of objections.

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. Section 17(1)(h) of the Act the R15 000 residential property exclusion complements the above national initiatives.

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 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 deferrement 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 the indigents.

It is recommended that municipalities exempt from rating properties whose owners are recipients of the old age or disability grant. As of 1 April 2005, the income limitation for these persons is R19 128 p/a and R35 448 p/a for a single and married person respectively.

The Department of Social Development may update the above income limitation annually. To confirm whether a property owner is a beneficiary of the old age or disability grant, a municipality may approach the Department of Social Development or its provincial or local offices, which would use the "Socpen system" to confirm whether the said property owner is an old age or disability grant recipient or not. The website and telephone number of the Department of Social Development are **www.socdev.gov.za**, and (012) 312- 7500 respectively.

It is also recommended that municipalities exempt from rating properties whose owners are not recipients of the old age or disability grant, but who meet the income limitation for old age or disability grant. 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 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 of 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 of Social Development conducts its own reviews of these recipients on a 5-year periodic basis. 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 should a municipality deal with relief measures pertaining to public service infrastructure?

Section 3(3)(h) of the Act states that municipalities in developing their rates policies must “take into account the effect of rates on public service infrastructure.” The components of public service infrastructure such as public roads and railway lines are defined in the Act. Public service infrastructure plays a strategic role in the economy, sustaining of human life, facilitating trade and investment activities within the domestic economy and positioning of the country in the global economy. For instance, Telkom and similar institutions provides a communication network to the community, Eskom provides electricity to the community which is a basic service for the community, the water services providers like Umngeni Water and Rand Water provide a life sustaining service to the community. Transnet's railway network and its other infrastructure at harbours and airports, coupled with public roads play a significant role in promoting intra-domestic trade and the competitiveness of South Africa in the global trading system, and influence foreign perceptions about the desirability of South Africa as an investment destination. These have an effect on government's goal of job creation as the competitiveness of the local (municipal) economies and the entire South African economy vis-a-viz the international economy may be compromised through excessive rating of public service infrastructure.

Should municipalities rate these properties highly, the rates liabilities on national and provincial government, and many of their key public utilities like Transnet, Eskom, Water Boards, etc, will all face massive increases in such rates liabilities, and reduce their scope for increasing spending on key infrastructure like roads, ports, power plants, water plants within such municipal jurisdictions and across the country at large.

Were it not for constitutional constraints, National Government would have recommended to Parliament that all components of public service infrastructure as defined in the Act be entirely excluded from rating in terms of section 17 of the Act.

When municipalities are exercising their power to rate with regard to public service infrastructure, they must ensure that their rates policies are not a strong inhibitor of public service infrastructure businesses locating within their jurisdictions. In the case where municipalities rate public service infrastructure, they must consider providing very significant rebates. In the interest of accelerating the provision of basic services to communities, and enhancing the international competitiveness of the South African economy and mobilisation of foreign investments, job creation, municipalities are advised to exempt from rating all components of public service infrastructure as defined in the Act.

How should municipalities deal with State properties?

The usage of the word "State properties" in this paragraph refers to those properties owned by the State, which are not included in the definition of public service infrastructure in the Act. These State properties can be classified into 3 categories:

(a) State properties that provide local services, e.g. clinics and local hospitals, police stations, courts, home affairs offices, State land and other Trust lands created by the State occupied by municipal constituencies, etc, given that these offices or properties provide services that benefit the residents of the municipality. The case of public schools that is dealt with elsewhere in this Guidelines falls into this category.

(b) State properties that provide regional/municipal district-wide/metro-wide service, e.g. prisons and hospitals.

(c) State properties that provide provincial/national service, e.g. defence and provincial and national headquarters and their regional and local administrative offices.

It is reasonable for government to pay full property rates like other property owners regarding State properties that provide a provincial/national service. Municipalities should consider providing very significant rebates to State properties that provide a local or regional/municipal district-wide/metro-wide service. Municipalities are advised to exempt from rating State properties that provide a local or regional/municipal district-wide/metro-wide service to its community and those of communities of surrounding municipalities.

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

The Provincial Departments of Education provide funding for operating expenditure to public schools and subsidies to independent schools in line with the "National Norms and Standards for School Funding in terms of the South African Schools Act, 1996" set out by the Department of Education. This National Norms and Standards and a list of schools that benefit from Provincial

Education Departments are available from the Provincial Education Departments and their regional offices. The National Norms and Standards for School Funding are in the process of being reviewed by the national Department of Education. It is anticipated that a revised version would be in place by the end of December 2005, with a view of it informing the 2006/07-school calendar year and financial year. 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 Education Departments.

The third column of the Table titled “Resource targeting table based on condition of schools and poverty of communities” indicates government subsidises the expenditure per learner in the poorest schools (quintile 1) much more than learners in the least poor schools (quintile 5).

Resource targeting table based on condition of schools and poverty of communities		
School quintiles, from poorest to least poor	Expenditure allocation	Per learner expenditure indexed to average of 100
Poorest 20% (Q1)	35% of resources	175
Next 20% (Q2)	25% of resources	125
Next 20% (Q3)	20% of resources	100
Next 20% (Q4)	15% of resources	75
Next 20% (Q5)	5% of resources	25

Source: Extract from the National Norms and Standard for School Funding in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), in section 101, dated October 1998

For 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 School

Government policy is to enable subsidies to be granted in relation to the socio-economic circumstances of an eligible (registered indepent 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.

Section 3(3)(g) of the Act makes reference to the word "reductions" rather than "exemptions", however, given that these reductions are done at 100% which is tantamount to complete exemptions, the correct word which should have been used to reflect the policy intention of the Legislature is "exemptions".

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

- The South African Revenue Service (SARS) currently give 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 particulars of SARS' Tax Exemption Unit in Pretoria are as follows:
  Tel: (012) 422 8800, Fax: (012) 422 8830, E-mail: teu@sars.gov.za.

- 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 got 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 can use also SARS e-mail address **teu@sars.gov.za** and web site www.sars.gov.za to access information on registered POBs in terms of Income tax Act performing specific public benefit activity as defined in the Act. In the SARS website click on “Public Benefit Organisations window” to access information on registered PBOs. Since the website is updated quarterly, it is still important for the municipality to confirm with SARS on whether a PBO is registered with SARS or not.

- 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” based on legislation as of 22 December 2003, issued on 15 March 2004. Municipalities must annually visit the SARS website for the latest version of the “Tax Exemption Guide”.

Welfare and Humanitarian

(a) The care or counselling of, or the provision of education programmes relating to, abandoned, abused, neglected, orphaned or homeless children.

(b) The care or counselling of poor and needy persons where more than 90 per cent of those persons to whom the care or counselling are provided are over the age of 60.

(c) The care or counselling 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 counselling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.

(h) The rehabilitation, care or counselling 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 counselling of terminally ill persons or persons with a severe physical or mental disability, and the counselling 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, counselling or treatment of persons afflicted with HIV/AIDS, including the care or counselling of their families and dependants 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 basic education and training", as defined in the Adult Basic Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

(d) "Further education and training" provided by a "public further education and training institution" as defined in the Further Education and Training Act 1998, (Act No. 98 of 1998).

(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 preschool 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 counselling services provided to persons for purposes of 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

(m) contemplated in section 10(1)(cA)(i), carrying on activities envisaged in subparagraphs (a) to (g).

(n) 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).

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

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

<u>What other information can municipalities use to identify independent schools owned by a Public Benefit Organisations?</u>

The school must be approved and legally registered through the Provincial Department of Education by the Head of the Provincial Department of 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.

What factors must a municipality use to grant exemptions, rebates and reductions on properties used for agricultural purposes?

Section 3(4) of the Act states that if a municipality is intending to grant relief measures like exemptions, rebates or reductions on properties used for agricultural purposes, it must take into account the extent of services provided by the municipality in respect of such properties, the contribution of agriculture to the local economy, 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. A municipality can approach this issue in the following ways:

(a) The extent of municipal services provided to agricultural properties

To determine rebates, a municipality can quantify in percentage form all its services to the ratepayers and then decide on the percentage each service is awarded in general. This will help in deciding on rebates to be given to each property. For example a municipality can use the following rebates structure in general:

- 7.5% rebate, if there are no municipal roads next to the property;
- 7.5% rebate, if there is no municipal sewerage to the property;
- 7.5% rebate, if there is no municipal electricity to the property;
- 20% rebate, if water is not supplied by the municipality;
- 7,5% rebate, if there is no refuse removal that is provided by the municipality.

Regarding refuse removal, it should to be borne in mind that for most residential properties in rural areas the municipality does not supply refuse removal. If farms are not densely populated, the issue of refuse removal may be disregarded.

Municipalities should consider applying the provisions made in this subsection to the mining sector.

(b) The contribution of agriculture to the local economy

A municipality can offer rebates, e.g. 5% if agricultural properties contribute substantially to job creation, and the salaries/wages of farm workers are reasonable, e.g. if they meet minimum standards set by government or if they are in line with the sector's average.

(c) The extent to which agriculture assists in meeting service delivery and development obligations of the municipality and contribution to the social and economic welfare of farm workers

A municipality can give relief measures to properties that are used for agricultural purposes along the following lines:

- 5% rebate, if the owner is providing permanent residential property to the farm workers and such property is registered in the name of these farm workers, proof must be provided;
- 5% rebate, if such residential properties are provided with portable water;
- 5% rebate, if the farmer for the farm workers electrifies such residential properties;

- 5% rebate, if the farmer is availing his land/buildings to be used for cemetery, education and recreational purposes of the farm workers' children and nearby community in general, etc.

In cases where both (a)-(c) are relevant to farm properties the municipality shall have provided 75% rebate, resulting in such agricultural properties being liable for only 25% of the applicable Cent amount in the Rand as rates.

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

Yes, section 8(2) of the Act is not exhaustive in outlining categories of properties that municipalities may use for differential rating purposes, including the granting of exemptions, rebates and reductions. A municipality is at liberty to use any of the categories listed in section 8(2) of the Act and to add other categories that would make implementation of its rates policy possible. For example, 8(2)(g) of the Act (State-owned properties) can be sub-categorised into the following:

i. State properties that provide local services;
ii. State properties that provide regional/municipal district-wide/metro-wide service;
iii. State properties that provide provincial/national service.

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 rate 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 articulated in the Reconstruction and Development Programme (RDP) White Paper of 1994, the Growth, Employment and Redistribution (GEAR) model, as well as subsequent policy deliberations in respect thereof, which set both macro-economic and more specific sectoral parameters relevant to tax considerations. Some of the key general principles of both documents are elaborated below.

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:

(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.

Explanation of the content on the above mentioned general principle:

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 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 policy 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 behavior. 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. Local government 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:

(a) On the first 30% of the market value of public service infrastructure as defined in the Act;
(b) On any part of the seashore (see explanation on pg 23);
(c) On any part of the territorial waters of the Republic of South Africa (see explanation on pg 23);
(d) On any islands of which the State is the owner;
(e) On protected areas;
(f) On mineral rights (see explanation on pg 24);
(g) On land reform beneficiaries (see explanation on pg 24);
(h) 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 (see

explanation on pg 27); and

(i) Property used primarily for religious 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 most stormy 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 may comply/implement section 17(1)(e)? How will municipalities identify and know that the declaration of property as a protected area in terms of the applicable Act mentioned in section 17(1)(e) is withdrawn, so that they may implement section 17(2).

The Department of Environmental Affairs and Tourism (DEAT) will have a register called the "Register of Protected Area" likely to be ready in June 2006 for distribution to all municipalities. The register will contain a list of all protected areas (National and Provincial protected areas), including the name of the protected area, the name of the municipality where the protected area is located, cadastral boundaries, the kind of protected area in each case, the date of declaration and withdrawal. The register will include as its appendix national botanical gardens. This register will be reviewed annually. As and when there are new declarations and withdrawals of the protected area, the Gazetted copy will be forwarded to the relevant municipalities for their information by DEAT. As and when there are new declarations and withdrawals of the protected area, the Gazetted copy will be forwarded to the relevant municipalities for their information by DEAT. The same applies regarding national botanical gardens.

In the interim, while the register is not yet ready for distribution to municipalities, property owners of protected areas and national botanical gardens should provide municipalities, as a proof that their properties fall within the ambit of section 17(1)(e) of the Act, their formal contract document with DEAT. Thereafter municipalities should confirm with the Department of Environmental Affairs and Tourism for national protected areas and national botanical gardens, and the Provincial department responsible for environmental affairs for provincial protect areas on the status of the contracts, in particular the date of declaration and the coverage of the individual protected area. The same procedure should be followed by a municipality to check for withdrawals. DEAT's Protected Area Chief Directorate and Biodiversity Chief Directorate (regarding national botanical gardens) can be contacted on this telephone number (012) 310 3911.

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

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

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, 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 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. Item (c) above includes the Communal Land Rights Act, 2004 (Act No. 11 of 2004).

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 pursuant to section 5 of the Communal Land Rights Act, 2004.

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 of Land Affairs in terms of the Communal Land Rights Act, 2004, 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, but 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.

Property, in relation to land tenure right, in terms of the Act means an older order right or a new order right as defined in section 1 of the Communal Land Rights Act, 2004.

The Communal Land Rights Act, 2004, defines a new order right as a tenure or other right in communal or other land which has been confirmed, converted, conferred or validated by the Minister responsible for Land affairs in terms of section 18 of that Act.

Older order right is defined as tenure or other right in or to communal land which

(a) is formal or informal;

(b) is registered or unregistered;

(c) derives from or is recognised by law, including customary law, practice or usage; and

(d) exists immediately prior to a determination by the Minister responsible for Land Affairs in terms of section 18 of the Communal Land Rights Act, 2004; but does not include:

i. any right or interest of a tenant, labour tenant, sharecropper or employee if such right or interest is purely of a contractually nature; and

ii. any right or interest based purely on temporary permission granted by the owner or lawful occupier of the land in question, on the basis that such permission may at any time be withdrawn by such owner or lawful occupier.

In the case of State land and Trust Lands created by the State, the State and such Trust lands are liable for the payment of rates prior the registration of such lands or parts thereof to land reform beneficiaries. However, municipalities are advised to consider exempting from rating these kinds of properties as they provide a local service that benefit the municipal community. If these properties are rated, very significant rebates should be provided.

Where there are old order rights, including permission to occupy (PTOs), such holders are themselves liable for payment of rates. Once old order rights are confirmed, converted into a comparable new order right by the Minister responsible for Land Affairs, the holders of such old order rights should be treated as land reform beneficiaries and thus, must enjoy the 10 year rates holiday.

Regarding land transferred to a particular community, based on practicalities of rates collections, a municipality must decide as to who between the community as a whole (through its representative committee) and the individual rights holders of land within the entire jurisdiction of that community is liable for payment of rates. Such a decision must be made through the process of rates policy development to ensure that community's views are taken into consideration and that a municipality makes a decision that is well informed.

Mandatory exclusion on the first R15 000 for residential property

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

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.

<u>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?</u>

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.

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

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.

<u>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?</u>

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 has a property used for multiple purpose as a category in its rates policy, the first R15 000.00 will be applicable to the component apportioned for the purpose of rating as a residential property.

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.

<u>How can a municipality determine a property category for a property used for multiple purposes?</u>

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.

Property used primarily for religious 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 in 8.1 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

Who is liable for property rates levied on a sectional title unit?

In terms of section 10 the Act, an owner of the sectional title unit is liable for a rate levied by a municipality on such a unit. This will be applicable only after the first valuation roll of a municipality has been prepared in terms of this Act, in the interim the body corporate remains liable for payment of rates on sectional title schemes. Once the valuation roll has been prepared in terms of the Act, the body corporate will only be liable for payment of rates in those cases where it is the owner of any specific sectional title unit.

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 -

(a) any allocation to that unit of an exclusive use area; and

An exclusive use area is a part or parts of the common property for the exclusive use by t he 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.

How will the Registrar of Deeds Office know when to ask for rates clearance certificate with regard to a sectional title unit?

Municipalities must inform the Registrar of Deeds Office that the municipality has compiled a valuation roll in terms of the Act, which will have resulted in each unit in the sectional title scheme having its own market value. This information will assist the registrar of Deeds Office to fulfil its mandate in terms of section 118 of Local Government: Municipal Systems Act, 2000.

SECTION E:

TRANSITIONAL ARRANGEMENTS: INTERFACE OF THE ACT WITH PROVINCIAL ORDINANCES

Can municipalities continue with valuation and rating in terms of the provincial ordinances after the commencement of the Act despite the repeal of the provincial ordinances by the Act?

Yes, section 88(1) of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) hereinafter referred to as the "Act", allow municipalities that were valuing and rating in particular areas within their jurisdiction using provincial ordinances before the commencement of this Act to continue using these provincial ordinances until the date on which the comprehensive general valuation of the whole area of the municipal jurisdiction is done in terms of this Act.

Can municipalities valuing and rating in terms of the Provincial Ordinances continue to use Valuation Boards and Appeal Boards after the commencement date of the Act despite the repeal of the provincial ordinances by the Act?

Valuation boards and appeal boards established in terms of the repealed Provincial Ordinances remain active for a period of four years from 2 July 2005. Once a municipality has compiled a new comprehensive valuation roll in terms of the Act, any outstanding matter with regard to appeals after 30 June 2009 must be referred to the Valuation Appeal Boards established in terms of the Act.

Valuation Appeal Boards established in terms of the Act will co-exist with the existing Valuation Boards and Appeal Boards established in terms of the repealed Provincial Ordinances for a four-year period from 2 July 2005 where necessary. Provided that where all objections and appeals emanating from a valuation roll in terms of the repealed Provincial Ordinances have been finalised within a particular jurisdiction and all municipalities within a district municipality as well as the metropolitan municipalities within the province have complied and implemented valuation rolls in terms of the Act, only Valuation Appeal Boards established in terms of the Act will exist.

Can a municipality use section 88 and 89 of the Act to extend the existing valuation roll or supplementary valuation roll compiled in terms of the Provincial Ordinance to include properties in areas where valuation and rating has not been done before the commencement

date of the Act using the Provincial Ordinance or the Municipal Property Rates Act?

(a) In terms of section 88 of the Act a municipality may continue conducting municipal valuations and property rating in terms of a repealed law (Provincial Ordinance), but only in respect of those areas of the municipal jurisdiction where it was previously done.

This section does not allow a municipality to use a repealed law in areas of the municipal jurisdiction where it did not conduct municipal valuations and rating before 2 July 2005. It cannot therefore use this section to bring new areas into the rates net in terms of a repealed law after 2 July 2005.

The only way properties in areas that were not rated before 2 July 2005 can be rated after 2 July 2005 is only through the development and compilation of a comprehensive general valuation roll covering the entire municipal jurisdiction in terms of the Act.

(b) Section 89 of the Act only allows a municipality to continue using the existing valuation roll and supplementary valuation roll that was actually in force in its area before 2 July 2005.

This section does not provide for the preparation of a new valuation roll or supplementary valuation roll in terms of a repealed law in areas of the municipality that were not covered by a valuation roll and a supplementary valuation roll before 2 July 2005.

For how long would municipalities use the existing valuation rolls and supplementary valuation rolls prepared in terms of the provincial ordinances after the commencement date of the Act?

Section 89(3) of the Act states that the use of existing valuation rolls and supplementary valuation rolls that have been prepared in terms of the provincial ordinances will be in force for a maximum period of four years, thereafter a municipality must fully comply with the provisions of the Act. The MEC for local government has no power to extend this four year period.

Even though section 89(3) of the Act provide for a maximum of four year period from the commencement date of the Act, a municipality must ensure that the validity date of the valuation roll has not expired in terms of the Provincial Ordinance so that a municipality is not faced with a legal vacuum as there will no longer be bases for rating given that the expired valuation roll will be null and void. If the validity date of the valuation roll expires within the four-year period provided for in the Act before compilation of a comprehensive general valuation in terms of the Act a municipality must request extension for validity of the roll using the relevant provisions of the Provincial Ordinance provided below:

- Section 6 of The Local Authorities Rating Ordinance No. 11 of 1977 (Transvaal)

  "A local authority shall, subject to the provisions of this Ordinance, from time to time cause a general valuation to be made of all rateable property within the municipality and such general valuation shall be valid, in respect of one or more financial years as such local authority may from time to time determine or re-determine, but not exceeding four financial years unless the Administrator, at the request of such local authority and if satisfied with the reasons advanced therefore, extends such validity beyond four financial years but for not more than one financial year at a time".

- Section 8 of the Property Valuation Ordinance proclamation no. 148 of 1993 (Province of the Cape of Good Hope)

  "A local authority shall from time to time, subject to the provisions of this Ordinance, cause a general valuation to be carried out of all property within its local authority area, and such general valuation shall be valid in respect of one or more financial years, as such local authority may from time to time determine, but not exceeding four financial years, unless the Premier at the request of such local authority and if satisfied with the reasons advanced therefore extends such validity beyond four years but not for more than one financial year at a time".

- Section 155(1)(a) of the Local Authorities Ordinance no. 25 of 1974 (Province of Natal)

  "For the purpose of assessing the rates the council shall as often as it may deem necessary, but not less than once in every five years or such further period as may be approved by the Administrator cause a valuation to be made by one or more persons competent as valuers of all property within the borough, other than public streets, public places, and such valuation shall include a valuation of all land and of all buildings within the borough and the council shall cause a valuation roll to be prepared;"

- Section 101(3) of the Local Government Ordinance no. 8 of 1962 (Free State Province)

  "The Responsible Member may by proclamation suspend any provision of sub-section (1) and (2) in respect of all municipalities or of such municipalities as may be specified in the proclamation, for such period as he may deem fit".

Can the MEC for local government in a province extend the period of validity of a valuation roll done in terms of the Act?

Yes, the MEC for local government in a province can extend the period of validity of a valuation roll done in terms of the Act from 4 to 5 years. The extension can only be granted if the provincial executive has intervened in the municipality in terms of section 139 of the Constitution, or on request by the municipality, in exceptional circumstances which warrant such extension.

How would a municipality harmonise rating if different valuation rolls of former predecessor municipalities are used?

Section 89(2) of the Act states that, if a municipality uses valuation rolls and supplementary valuation rolls that were prepared by different predecessor municipalities, the municipality may impose different rates based on the different rolls, so that the amount payable on similarly situated properties is more or less similar. In determining the amount payable on similar properties, the date of compilation of the valuation rolls by different predecessor municipalities must be taken into account.

For how long after the commencement of date the Act would the existing property rates policies be valid?

Section 90(1) of the Act states that, a property rates policy adopted by a municipality before the commencement date of the Act, including any revisions of such a rates policy, continues to be valid after such commencement until the date on which the first rates policy and valuation roll prepared by the municipality in terms of the Act take effect at the start of the municipal financial year. No existing rates policy, including any revision of such a rates policy, prepared in terms of provincial ordinances would be valid after 4 years of the commencement date of the Act.

Will the review of such a rates policy after the commencement date of the Act be based on the provincial ordinances or the Act or both?

Yes, the review of such a rates policy will be based on both the provincial ordinances and the Act. Refer to regulation on "Transitional Arrangements pertaining to the implementation of the Act".

How should municipalities set a Cent amount in the Rand in a manner that prevent major shocks to ratepayers when moving from site rating to rating based on the Act or upon compilation of new comprehensive property valuations?

The critical determinant of how much property owners will pay is the amount in the Rand each municipal council will determine for the various property categories.

The Act does **not change the total revenue needs of municipalities**, nor does it set the Cent amount in the Rand. Each municipality will continue to set and collect property rates in an amount sufficient to meet its needs, taking into account the likely impact of rates on local economic development, ratepayers and their ability to pay such rates.

Municipalities will have to properly manage the transition from its old rating practice to the new system based on the Act. All things equal, municipalities that have not been rating on the market value of land and buildings combined, should consider reducing the Cent amount in the Rand drastically to ensure that there are no major shocks to ratepayers and economic sectors given that now they would be raising revenue from a much expanded rates base. Also, for all municipalities, when new valuations are done, from time to time, the Cent amount in the Rand should be reviewed, and if necessary reduced drastically to avoid creating major shocks to ratepayers.

> **For example,** if the municipality was raising total rates income of R1 650 295 from residential/commercial property category based on rating land, whose rates base was worth R56 204 500 (total market value of all individual properties within the residential/commercial property category), and the new rates base, which is land and buildings, is worth R273 204 500 in market value, the municipality would have to drastically reduce the cent amount in the Rand, from around R0.029 to around R0.006.
>
> Another alternative to be considered in managing property rates shock is through the phasing-in of the market value of those properties. This will be done by phasing-in of the new

market value over a period of four years, which is linked to the validity of the roll. The table below makes the point clear:

Valuation Cycle	Value on a roll without phasing-in (in Rand)	Rates payable assuming 1Cent/Rand	Value on a roll after phasing-in (in Rand), assuming 25% phasing in	Rates payable assuming 1Cent/Rand
Last Year of cycle	60 000	600	60 000	600
1st Year in new cycle	70 000	700	62 500	625
2nd Year in new cycle	70 000	700	65 000	650
3rd Year in new cycle	70 000	700	67 500	675
4th (last) Year in new cycle	70 000	700	70 000	700

Property A's market value has increased from R60 000 to R70 000 due to a compilation of a new general valuation roll. Rates payable by property A to the municipality will increase from R600 to R700 if the market value of this property is not phased-in and the Cent amount in a Rand is constant at one Cent.

To minimise rates shocks from R600 to R700, the phasing-in of market values over a period of four years is used in the manner illustrated on the above table and outlined below:

Year 1: The market value of R62 500 at one Cent will yield rates payable of R625 instead R700 if the phasing-in was not used.

Year 2: The market value of R65 000 at one Cent will yield rates payable of R650 instead of R700 if the phasing-in was not used. The same principle applies for Year 3 and Year 4. This means a municipality has spread the rates burden to a period of four years.

As the table illustrates although the phasing in is effected on the market values as listed in the valuation roll, the effect works itself to the total rates liabilities of property owners as well as the property rates income in the municipal budget.

SECTION F:

LIABILITY FOR RATES OF AGRICULTURE PROPERTY OWNED BY MORE THAT ONE OWNER IN UNDIVIDED SHARE PRIOR 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 got 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 G:

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 security/guarantee and/or 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 family or his/her heirs as this would compound the homeless situation which government is trying to address through various programs of the Department of Housing.

- Deferral of rates cannot be applied to properties owned by indigent households, including households led by orphans. The mascarading HIV/AIDS epidemic is creating a lot of 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 H:

RECOVERY OF RATES IN ARREARS 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 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 I:

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 compilation of the valuation roll must certify such valuation roll prior 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 do 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. road shows and radio), ward committee meetings or community meeting.

NOTES

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