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The Municipal Manager
The Msunduzi Municipality

Sir

COMMENTS ON THE DRAFT RATES POLICY 2020/21

Rates Watch (Pty) Ltd was appointed by the South African Property Owners Association (SAPO) to submit comments on the draft Rates Policy.

SAPOA represents approximately 1,300 companies and organisations (some of which include the following, ABSA, Nedbank, Investec Property Group, Old Mutual Properties, Liberty Properties, Eskom, Transnet, East London IDZ, Growthpoint Properties, the V&A Waterfront Company, ACSA, Eris Property Group, Encha Properties, Zenprop, Redefine properties, Resilient Properties etc).

SAPOA members own and control about 90% of all commercial, retail, office and industrial properties in SA to the value of approximately R300bn and constitute some of the largest rate payers in South Africa.

We have the pleasure to submit comments on the draft policy and you are requested to consider these comments.

1. General

Sections of the MPRA are included verbatim in this policy. Although it is not required, it is suggested that reference be made to the applicable section.

2. Clause 1 - Definitions

2.1 “agricultural property”

Agricultural property is defined in the MPRA and the definition in the rates policy could be *ultra vires* as it is materially different from the said definition. There is no reference in the

MPRA definition that the property must be used for financial gain. The words "*financial gain"* must be removed from your definition.

The MPRA definition does not refer to the rearing of game.

Sub-sections 1.1.6 and 1.1.7 are duplications of the sub-section 1.1.5 and should be deleted.

2.2 "impermissible rates property"

Why are the properties referred to in section 17(1)(aA) of the MPRA excluded from the list?

The reference must be to section 17(1).

2.3 "pending ratepayer"

The definition could be deleted as the term is not used to create a property category for differential rates purposes or to grant relief in terms of section 15 of the MPRA.

The term is never used in the rates policy.

2.4 "public benefit organisation property"

The purpose is to define what "public benefit organisation property" is. There should be no reference to ratios as it is not relevant.

Items 3 and 5 are excluded, to which document are you referring?

Why are you referring to the ratios in the definition?

Rebates, reductions and exemptions cannot be considered under impermissible rates. Impermissible rates are dealt with under section 17 of the MPRA, no rates may be levied on these properties, it is therefore not possible to grant rebates, reductions or exemptions.

It is suggested that the definition as per the Ratio Regulation be included in this policy.

Extract from Ratio regulation:

> "**public benefit organisation property**" means property owned by public benefit organisations and used for any specified public benefit 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.

2.5 "residential property"

The proposed definition is in conflict with the MPRA definition, is *ultra vires* and must be amended.

The definition contained in the MPRA must be included in the policy.

The suggestion that proposed erven that is shown on a plan approved by the Surveyor General could be valued and rated separately goes against the definition of property in the MPRA.

The definition should be amended as follows:

"residential property" *means a property included in the valuation roll as residential and used primarily for domestic residential purposes, and includes bulk residential properties identified by the municipality, ~~and where there is an approved Surveyor General Plan, Township Layout or approved general diagram, may be separately valued and rated, notwithstanding the non-registration of any sub-divisions~~;*

2.6 "rural communal property"

Agricultural property is defined in this policy as property that is used for farming activities for financial gain. Agricultural property that is developed predominantly for residential purposes is unattainable.

The reference to a single cadastral holding does not seem to be necessary.

It is required that the property be developed predominantly for residential purposes, why is it necessary to refer to the non-residential structures?

Is it necessary to refer to the ownership of the property?

The definition could be redrafted as follows:

"rural communal property" means property developed and used predominantly for residential purposes"

The proposed wording is similar to the residential property definition in the MPRA.

2.7 "sectional title garages"

The definition should be reworded to include units used as store rooms, servant quarter etc.?

2.8 "vacant land"

The words *'as listed in the valuation roll'* should be deleted.

The suggestion that proposed erven that is shown on a plan approved by the Surveyor General could be valued and rated separately goes against the definition of property in the MPRA.

Clause 2: Adoption and contents of rates policy

The MPRA provides in section 5 that the policy must be reviewed annually and it is suggested that the applicable financial year be included in this clause.

3. Clause 5 – Levying of Rates

In terms of section 15 of the MPRA, exemptions, rebates and reductions may only be granted as provided for in the approved rates policy. It is suggested that the words "*by resolution"* be removed.

Why are you levying rates on all municipal property with values more than R10 000. It does not make sense to levy rates on your own properties that are used for water care works, reservoirs, municipal head office, fire stations etc.

4. Clause 6: Differential rates

Section 8 of the MPRA enables the municipality to levy differential rates and this clause should therefore indicate if it is the intention of the municipality to levy differential rates.

The policy must indicate whether categories will be based on the use, permissible use or a combination of the use and permitted use – refer to section 8(1) of the MPRA.

Use and permitted use are the only criteria that is allowed to determine categories of property for differential rating.

The words *"which may include"* in the opening sentence of the clause creates the impression that the could be other criteria. In terms of section 8(1) of the MPRA it is not allowed.

Judging from the definitions, categories are based on the use of a property, and it is suggested that it should be stated in the policy.

The property categories that are created for the purpose of differential rating should be listed here.

What are the property categories?

This policy does not comply with section 8 of the MPRA!!

5. Clause 8 – Properties used for Multiple Purposes

Clause 8.1 does not make sense and should be deleted.

Clause 8.2 could be reworded as follows:

" A rate levied on a property used for multiple purposes must be determined by- "

6. Clause 9: Levying of property rates on sectional title schemes.

The wording of this clause does not align with section 25 of the Sectional Titles Act, 1986, as amended ("STA").

Section 12 of the Sectional Titles Act:

12. Registration of sectional plans and opening of sectional title registers

(1) When the requirements of this Act and any other relevant law have been complied with, the registrar shall -

(a) register the sectional plan and allot a distinctive number to it;

(b) open a sectional title register in respect of the land and building or buildings thereon in the manner prescribed;

(c) keep by means of a computer or in any other manner or by means of a computer and in any other manner, such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;

(d) simultaneously with the opening of the sectional title register, issue to the developer in the prescribed form a certificate of registered sectional title in respect of each section and its undivided share in the common property, subject to any mortgage bond registered against the title deed of the land;

(e) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of any reservation made in terms of section 25(1), subject to any mortgage bond registered against the title deed of the land;

[Paragraph (e) substituted by section 4 of Act 11/2010]

(f) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of a right of exclusive use as contemplated in section 27(1), subject to any mortgage bond registered against the title deed of the land; and

[Paragraph (f) substituted by section 6 of Act 63/91 and section 4 of Act 11/2010]

(g) make the necessary endorsements on the title deed, any mortgage bond or other document, or in his records.

In terms of section 12(1)(d) the Registrar of Deeds will issue a certificate of registered sectional title in respect of each section and its undivided share in the common property to the developer. There are no unregistered units after the register is opened by the Registrar of Deeds. A unit is either registered in the name of a new owner or the developer.

In terms of section 12(1)(e) of the STA the Registrar of Deeds will also issue a certificate of real right to the developer to extend the scheme by the addition of sections. The right to extend the scheme is a right registered against the property and is “property” as per the MPRA definition of property – refer to part (b) of the definition.

Unless the municipality has, in terms of section 7 of the MPRA, exercised its discretion, these rights must be valued and it is not necessary to provide for it in the rates policy.

The provision that only rights that are trade shall be included in the valuation roll does not make sense, all rights must be valued.

7. Clause 14: Exemption, reductions and rebates

Is it feasible or even necessary to provide reasons for exemptions, rebates and reductions in the budget?

The income forgone should be reflected in the budget.

8. Clause 15: Categories of properties

8.1 Are these not the categories created in terms of section 8 of the MPRA for the purpose of differential rating? The heading suggests that these are the categories for differential rating.

8.2 Are you really considering the possibility to grant exemptions, rebates or reductions to all of these property categories?

8.3 Introduction following the heading should read:

'Categories of properties for purposes of levying differential rates are determined as follows:' and it should be moved to clause 6 which deals with differential rating.

8.4 In terms of section 15 of the MPRA the framework for exemptions, rebates and reductions must be included in the rates policy.

9. Clause 16 – Constitutionally impermissible rates

This clause is more or less a verbatim repetition of section 16 of the MPRA. The rates policy is an extension of the MPRA and allows the municipality to "customise" certain aspects of property rates.

It does not add any value to include sections of the MPRA in this policy.

10. Clause 17: Other impermissible rates

Is it necessary to include the provisions of section 17 of the MPRA on other impermissible rates in the policy?

If it is decided to retain the clause for the sake of clarity, reference should be made to the MPRA and the section should either be included verbatim or indicated it an interpretation of the section.

11. Clause 18 – Exemption of municipalities from provisions of section 17

Another example of a repetition of a section of the MPRA.

It could be removed.

12. Clause 19: Criteria for qualification of specified category of property

12.1 This clause should be cleaned up because it is dealing with impermissible rates and rates relief (exemptions, rebates and reductions)

12.2 This clause provides criteria for the application for rebates. It is suggested that the heading be amended to indicate which criteria is referred to.

12.3 Clauses 19.2.1 and 19.3.1 could be moved to clause 19.1. It is suggested that it be inserted before clause 19.1.1 and renumber all the subsequent clauses.

12.4 Is it fair to refuse a rebate if the application is not made in time?

12.5 Are you contemplating additions rebates for Agricultural Properties and Public Benefit Organisation Properties?

The ratios as per the Ratio Regulations is a statutory right and must be applied to all properties that satisfy the definitions in the said regulations.

12.6 Clause 19.2: Agricultural Properties

Rebates are not linked to supplementary valuations.

Is it fair to link the rebate to a dated after the application?

Subsistence farmers may not be able to produce tax certificates, how will they qualify for the rebate.

12.7 Clause 19.3: Public Benefit Organisation Property

Public Benefit Organisation Properties qualify for a rate ratio of 1,0:0,25 in terms of the Amended Municipal Property Rates Regulations on the Rate Ratios between Residential and Non-Residential Properties and this ratio must be applied as prescribed by the said regulation.

The additional requirements included in this clause should only be applicable to a rebate that is contemplated by the municipality and may not be conditions to for the application of the prescribed rate ratio.

12.8 Clause 19.4: Places of Worship

These properties are excluded from rates in terms of the MPRA and cannot be penalised if they fail to apply for the exclusion.

The requirement that they must re-apply for each General Valuation could be in conflict with the MPRA.

13. Clause 20 – Limits on Annual Increases

Another example of a repetition of a section of the MPRA.

It should be removed.

14. Clause 22: Criteria for qualification for rebate for categories of owners of property.

Commented [BE1]: Not simplified

The clause could be simplified by combining criteria that are applicable to all the owners.

14.1 Clause 22.1 Pensioners or disability grantees

14.1.1 Clause 22.2 should be renumbered to 22.1.2

14.1.2 Clauses 22.2.2 to 22.2.11 should be renumbered to 22.1.3 to 22.1.12.

14.1.3 Rebates should be granted from the date the person qualifies and not 30 days following the application.

14.1.4 Do you have the capacity to review all the applications on an annual basis?

14.1.5 It does not make sense to disqualify an applicant because he/she owns more than one property. The income that could be derived from such properties is used to supplement

income and it should not be different from the income received from indirect investment in property.

Sub-clause 22.2.8 should be deleted.

14.2 Clause 22.3: Child headed Households

Clause should be renumbered to 22.2

See comments under item 14.1 above.

What does *"… in terms of legal age of majority;"* mean? (Clause 22.3.2)

Clause 22.3.15 could be deleted as it is a duplication of clause 22.3.12.

14.3 Clause 22.4: Listed Property Rebate

The sale of the property will not have an impact on the "Listing" or the status as National Monument as the listing goes with the property and not the owner.

Sub-clause 22.4.5 seems to be unfair and harsh.

14.4 Clause 22.5 – Developers rebate

Supporting developers shows that the municipality is serious about development and growing its rates basis.

15. Clauses 23, 24, 25, 26, 27, 28 & 33

It does not add value to include sections of the MPRA in the policy and these clause could be deleted.

16. Clause 31: Restraint on the transfer of property and revenue clearance certificates

Is it correct to deal with clearance certificates in this policy?

Property rates is but one of several outstanding amounts on a property.

It is suggested that a separate policy be created to guide this process.

17. Clause 35 – Enforcement of Other Legislation

This policy cannot be read parallel with the MPRA and MFMA, the policy ranks below the MPRA and regulations and must be read subject to the MPRA and regulations.

Regards

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