

Implementation of Special Rating Areas in terms of the MPRA and Key Considerations

SAPMI Consultative Forum

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BACK TO BASICS : SERVING OUR COMMUNITIES BETTER



PURPOSE

To outline the provisions of section 22 of the Municipal property Rates Act, municipal practice regarding its implementation and key considerations in this regard

INTRODUCTION

- Special rating areas (SRAs) are geographically defined areas that are established by a municipality in terms of section 22 of the Act
 - property owners within an area are levied an additional rate over and above the rate levied by the municipality to upgrade the demarcated area
 - Usually community initiated but nothing stops a municipality from engaging communities to encourage the establishment of SRAs
 - the determination of the SRA may not be done in a manner that reinforces existing inequities and it must be informed by the municipality's IDP

INTERNATIONAL EVOLUTION AND PRACTICE (1)

- The concept can be traced back to the 1960s where it started in business districts
 - a group of small businessmen came together in Toronto, Canada and devised a new approach to solve their free-rider problem of businesses that benefitted from the local voluntary business association but did not contribute financially
 - The businessmen explored the feasibility of an autonomous, privately managed entity with the power to impose an additional tax on commercial property owners to fund local revitalisation efforts

INTERNATIONAL EVOLUTION AND PRACTICE (2)

- The concept can be premised as a recognition by the business community (and others) that, faced with local government funding constraints, collective action to supplement local governance through self-imposed funding initiatives could be tapped into
- The initiatives focussed
 - on protecting against decay/deterioration
 - Urban renewal
 - improving the areas' attractiveness to investment
 - enhancing market values

THE CURRENT SOUTH AFRICAN CONTEXT

- Currently in SA the concept manifests itself in the formation of City improvement Districts (CIDs) and Special Rating Areas (SRAs)
- The legality of CIDs in Gauteng (and elsewhere) is untenable in light of the SCA 2015 judgement
- SRAs in terms of the MPRA appear to be the only legislated vehicle to implement these initiatives

SRAs AS PER THE MPRA (1)

- SRAs are a creation of section 22 of the MPRA, therefore all aspects thereof are subject to the provisions of the MPRA
- Section 22(1) of the MPRA allows a Council of municipality to:
 - determine an area within the municipality as a SRA;
 - **levy an additional rate on property** in that area for the purpose of raising funds for improving or upgrading that area;
 - differentiate between categories of properties when levying an additional rate

SRAs AS PER THE MPRA (2)

- A municipality intending to establish a SRA in terms of section 22 of the MPRA must first provide for the establishment of these initiatives in its rates policy and by-law, outlining the relevant criteria
- A municipality must consult the local community, including on the following matters
 - the proposed boundaries of the area; and
 - the proposed improvement or upgrading of the area; and
 - obtain the consent of the majority (simple majority) of the members of the local community in the proposed special rating area who will be liable for paying the additional rate

SRAs AS PER THE MPRA (3)

- The MPRA requires a municipality to establish separate accounting and other record-keeping systems on:
 - the revenue generated by the additional rate; and
 - the improvement and upgrading of the area
- The municipality's key role in the establishment and revenue collection aspects of the SRA are quite instructive
 - Though the SRA is a joint initiative between the community and the municipality, the municipality retains the authority to levy and collect the rates as per the Constitution and the MPRA; and
 - Is ultimately responsible for ensuring that the SRA does not operate in a manner that is in conflict with the MPRA

SRAs AS PER THE MPRA

Municipality	# of SRAs established	Nature of SRAs
Buffalo City (EC)	1 through by-law	Commercial, residential
eThekweni (KZ)	9 through by-law	Different property categories
KwaDukuza	2 through by-law	Commercial
Breede Valley	1 through by-law	business
Cape Town	33 through by-law	Different property categories
Mossel Bay	1 through by-law	Commercial, residential
Stellenbosch	2, through by-law	All property categories
TOTAL	49 through by-law	

KEY CONSIDERATIONS (1)

- The Cities of Johannesburg and Ekurhuleni Have indicated their intention to implement section 22; they have published a Notice and an SRA policy and by-law for public consultation
 - Any CIDs within these municipalities that intent to become SRAs would have to fully conform to the provisions of the MPRA if they are to be established SRAs
- The City of Tshwane is reviewing its CIDs with a view to implementing section 22

KEY CONSIDERATIONS (2)

- Mbombela has established 3 CIDs with the following legally unsound characteristics
 - Vacuous establishment since there is no legal instrument of establishment in Mpumalanga
 - The use of the MPRA to fund the CID done through additional “rates rebates” (of 10%) for properties falling within the determined boundaries of the CIDs
 - The “**rebates**” **are** not directly credited to the property owners account (which they should be), but **paid over to the management bodies of the CIDs**
 - The rebates are provided for in the rates policy
- The Mbombela model is legally questionable and should not be used as a best practice model

KEY CONSIDERATIONS (3)

- The Cape Town SRA model is considered best practice and are being replicated by the Cities of Johannesburg, Tshwane and Ekurhuleni
- The Department has identified legal questions in the implementation of Cape Town's 33 SRAs which have been referred to the Chief State Law Advisor:
 - The legality of the manner in which voting (weighted voting system based on rateable property value) on matters during the lifespan of the SRAs vis the principles of the MPRA