cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO.6 0F 2004
CIRCULAR NO. 09 (1 AUGUST 2016)

CIRCULAR ON THE APPLICATION OF SECTION 32 (EXTENSION OF THE VALIDITY PERIOD OF VALUATION ROLLS BY THE MEC) OF THE MUNICIPAL PROPERTY RATES ACT, 2004 AND RELATED MATTERS

Introduction

This Circular supplements Circulars 07 (issued on 15 December 2014) and 08 (issued on 19 December 2014) as far as addressing issues related to the period of validity of a municipality's valuation roll and the granting of an extension to this by an MEC are concerned. The objective of this Circular is to advise municipalities and provincial departments responsible for local government in this regard to ensure seamless implementation of the Municipal Property Rates Act ("the MPRA").

The key matters that are addressed in this Circular relate to the following:

- Whether a municipality can of its own accord extend the lifespan of its valuation roll to the maximum period allowed in terms of section 32(1)(b) of the Act (maximum of 4 financial years for metropolitan municipalities and 5 financial years for local municipalities) if it took an initial decision to have a valuation roll that would be valid for less than the maximum number of years a valuation roll is allowed to be valid for; and

- Whether the MEC can extend the period of validity of a municipality's valuation roll more than once within the lifespan of that valuation roll

The application of section 32(3) of the MPRA regarding the one year extension of the validity period of a valuation roll when there is an intervention by the provincial executive in a municipality in terms of section 139 of the Constitution will not be commented upon in this Circular.

Appropriate application of section 32(1) of the MPRA

Section 32 of the MPRA states that:

> *"(1) A valuation roll-*
>
> *(a) takes effect from the start of the financial year following completion of the public inspection period required by section 49; and*
>
> *(b)* ***remains valid for*** *that financial year or for one or more subsequent financial years as the municipality may decide,* ***but in total not for more than****—*
> *(i) four financial years in respect of a metropolitan municipality; and*
> *(ii) five financial years in respect of a local municipality."* (Our emphasis)

Whilst a municipality has a discretion (choice) to determine the period of validity of its valuation roll subject to the legislated threshold of four years in the case of a metropolitan municipality and five years in the case of a local municipality, such discretion must be exercised after thorough consideration of all the relevant facts. These facts include the cost-benefit analysis of opting for a valuation roll with a shorter lifespan against recouping the costs of compiling the valuation roll and all related processes, and an analysis of the trends in the market values of properties within the municipal jurisdiction.

If, for example a municipality decides through its Council, that its valuation roll will be valid for three years, which is less than the legislated threshold of four financial years for metropolitan municipalities and five financial years for local municipalities, the municipality is bound by this decision and the lifespan of the municipality's valuation roll will remain three financial years as determined at the outset. Any further extension of the period of validity of the municipality's valuation roll (for example, from three years to four years in the case of a metropolitan municipality or to five years in the case of a local municipality) can only be granted by the MEC in terms of section 32(2) of the MPRA.

Appropriate application of section 32(2) of the MPRA

Section 32 of the MPRA states that:

> *"(2) The MEC for local government in a province* ***may extend the period for which a valuation roll remains valid*** *—*
>
> *(a) in the case of—*
> *(i) a metropolitan municipality,* ***to six financial years****; and*
> *(ii) a local municipality,* ***to seven financial years****,*
> *if the provincial executive has intervened in the municipality in terms of section 139 of the Constitution; or*
>
> *(b) in the case of—*
> *(i) a metropolitan municipality,* ***to five financial years****; and*
> *(ii) a local municipality,* ***to seven financial years****,*
> *on request by the municipality, in other exceptional circumstances which warrant such extension."* (Our emphasis)

The MEC has a discretion (choice) to extend the period of validity of a municipality's valuation roll to the maximum number of years prescribed in section 32(2)(a) and (b) (if there is an intervention by the provincial executive in the municipality in terms of section 139 of the Constitution or on a request by a municipality) or to extend the period of validity of a municipality's valuation roll by a period which is less than the legislated threshold. Such discretion must be carefully exercised because in terms of administrative law the MEC's discretion to extend the period of validity of a municipality's valuation roll can only be exercised once during the lifespan of a valuation roll. This means that if the MEC extends the period of validity of a municipality's valuation roll by one financial year, the MEC cannot later (during the lifespan of the same valuation roll) grant a further extension, whether it is an extension by one financial year or more as the discretion is exercised only once and not on multiple occasions during the lifespan of a valuation roll.

Below are some scenarios to illustrate the discretion and options that a municipality and an MEC have regarding the determination of the period of validity of a valuation roll and the extension of the period of validity of the valuation roll. Years in this table means municipal financial years.

Metropolitan Municipality 1 (s32(2)(a) extension of period of validity of valuation roll if the provincial executive has intervened in the municipality in terms of s139 of the Constitution)			
Maximum legislated number of years valuation roll can be valid (s32(1)(b))	Period of validity of valuation roll determined by Metropolitan Municipality 1	Maximum number of years (threshold) to which MEC may extend valuation roll	**Discretionary once-off options MEC has** to extend Metropolitan Municipality 1's valuation roll (s32)
4 years	3 years	6 years	1 year extension; or 2 years extension; or 3 years extension.
Local Municipality 1 (s32(2)(a) extension of period of validity of valuation roll if the provincial executive has intervened in the municipality in terms of s139 of the Constitution)			
Maximum legislated number of years valuation roll can be valid (s32(1)(b))	Period of validity of valuation roll determined by Local Municipality 1	Maximum number of years (threshold) to which MEC may extend valuation roll	**Discretionary once-off options MEC has** to extend Local Municipality 1's valuation roll
5 years	3 years	7 years	1 year extension; or 2 years extension; or 3 years extension; or 4 years extension.
Metropolitan Municipality 2 (s32(2)(b) extension of period of validity of valuation roll if the municipality requests an extension for any exceptional reason that warrants such extension)			
Maximum legislated number of years valuation roll can be valid (s32(1)(b))	Period of validity of valuation roll determined by Metropolitan Municipality 2	Maximum number of years (threshold) to which MEC may extend valuation roll	**Discretionary once-off options MEC has** to extend Metropolitan Municipality 2's valuation roll
4 years	3 years	5 years	1 year extension; or 2 years extension.
Local Municipality 2 (s32(2)(b) extension of period of validity of valuation roll if the municipality requests an extension for any exceptional reason that warrants such extension)			
Maximum legislated number of years valuation roll can be valid (s32(1)(b))	Period of validity of valuation roll determined by Local municipality 2	Maximum number of years (threshold) to which MEC may extend valuation roll	**Discretionary once-off options MEC has** to extend Local Municipality 2's valuation roll
5 years	5 years	7 years	1 year extension; or 2 years extension.

Upon receipt of an application from a municipality in terms of section 32(2) of the MPRA, (which must reach the MEC timeously prior to the expiry of a valuation roll and a decision must equally be made prior the expiry period of a valuation roll) the provincial department responsible for local government must carefully weigh the risks of recommending the granting of an extension to the period of validity of the municipality's valuation roll that is less than the legislated threshold because once the MEC pronounces on the matter, the MEC cannot review or rescinds his/her decision at a later date during the lifespan of the valuation roll.

To minimise risks, the provincial department responsible for local government should consider recommending (to the MEC) an extension of the period of validity of a municipality's valuation roll by the maximum number of years that is allowed by the MPRA. There is nothing wrong with the MEC granting an extension that is longer than is requested by a municipality, provided that the extension is granted only once and that it is within the legislated threshold. This ensures that the risks of failure by the municipality are minimised because the municipality has more time within which to prepare a new valuation roll, while also allowing the municipality that can do so to conclude the compilation of a valuation roll and related public inspection processes (as outlined in section 49 of the MPRA) within the initial extension period requested by the municipality.

The consideration to extend the period of validity of a municipality's valuation roll must take into account how far the process to procure a valuer in private practice by a municipality without in-house valuation capacity is, how advanced the actual process of compiling a valuation roll is against the total number of properties to be valued and the complexity of the valuations that are to be undertaken. Foreseeable challenges/complications that may arise must also be taken into account; these must have been taken into account by the municipality when submitting its request for an extension of the period of validity of its valuation roll. A reasonable examination of these factors will assist in recommending whether the MEC must accede to the request of a municipality in instances where a lesser period than the legislated threshold has been made.

In conclusion, a request for the extension of the period of validity of a municipality's valuation roll is an early warning indicator that things are not going smoothly in the municipality because either the municipality didn't plan well for the compilation of the valuation roll or that unforeseen circumstances which create deviations from the initial plan of successfully concluding the compilation of the valuation roll and related public inspection processes have arisen. **Consequently, such a municipality must (along the lines of section 81(1B) of the MPRA) submit a project plan to the MEC outlining detailed actions on how the remainder of the outstanding valuation process will be executed and subsequently submit progress reports to the MEC.** The province must monitor progress and periodically advise, support or give directives to the municipality where required. This is necessary to avoid failures that would require the triggering of an intervention by the provincial executive in terms of section 139 of the Constitution through the application of section 32(3) of the MPRA to save the municipality from starting a financial year with a lapsed valuation roll by further extending the lifespan of the municipality's valuation roll by one additional year.

CONTACT PERSON

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

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